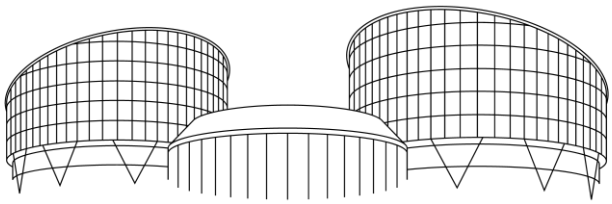

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF LELAS v. CROATIA

(Application no. 55555/08)

JUDGMENT

STRASBOURG

20 May 2010

FINAL

20/08/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of **Lelas v. Croatia**,

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

Christos Rozakis, *President*,
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Giorgio Malinverni,
George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 29 April 2010,

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

PROCEDURE

1. The case originated in an application (no. 55555/08) 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 Čedo Lelas ("the applicant"), on 6 November 2008.

2. The applicant was represented by Mr I. Škarpa, an advocate practising in Split. The Croatian Government ("the Government") were represented by their Agent, Mrs Š. Stažnik.

3. On 11 December 2008 the President of the First Section decided to communicate the complaint concerning the right to peaceful enjoyment of possessions to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant lives in Vrlika.

5. He is a serviceman employed by the Ministry of Defence (*Ministarstvo obrane Republike Hrvatske*). In 1996, 1997 and 1998, as a member of the 40th Engineering Brigade of the Croatian Army, the applicant occasionally participated in demining operations in the newly liberated territories in Croatia.

6. On the basis of the Decision of the Minister of Defence of 18 September 1995 (see paragraph 36 below), he was entitled to a special daily allowance for such work.

7. Since the allowances had not been paid to him, on 21 May 2002 the applicant brought a civil action against the State in the Knin Municipal Court (*Općinski sud u Kninu*), seeking payment of the unpaid allowances. He sought in total the sum of 16,142.83 Croatian kunas (HRK) together with accrued statutory default interest.

8. The State responded that his action was time-barred because the three-year limitation period for employment-related claims had expired.

9. In reply, the applicant argued that on several occasions he had asked his commanding officer why the allowances had not been paid. His commanding officer had made enquiries of his superior, who had then contacted the General Staff of the Croatian Armed Forces (*Glavni stožer Oružanih snaga Republike Hrvatske*). Eventually, the applicant had been informed through his commanding officer that his claims were not being disputed and that they would be paid once the funds for that purpose had been allocated in the State budget. Relying on that information, the applicant argued that the State had acknowledged the debt within the meaning of section 387 of the Obligations Act and that the running of the statutory limitation period had thus been interrupted.

10. The court heard the applicant's commanding officer B.B. and the head of the Split Regional Finance Department of the Ministry of Defence, Brigadier I.P.

11. B.B., who had been the commander of the 40th Engineering Brigade between January 1996 and April 1999, testified that lists of servicemen who carried out demining work, together with the number of days worked and the corresponding amount of allowances, had been submitted to him by platoon commanders within the brigade. As the commander of the unit, he had signed them after checking them for accuracy and had then submitted them for certification to the commander of the 3rd Operational Zone. After the commander of the 3rd Operational Zone had signed the lists, they had been submitted for payment to the Regional Finance Department in Split. He had informed the applicant that the lists had been submitted for payment. When the allowances were not paid, the applicant and other members of the unit had approached him, as their commanding officer and the only person they were authorised to approach under internal regulations, asking him when the payment would be made. In their name he had then contacted the commander of the 3rd Operational Zone. Each time he had been informed that the right to receive payment and its amount were not being disputed and that payment would follow after the funds had been allocated for that purpose. Each time he had transmitted that information to the members of his unit, including the applicant.

12. I.P. had since 1996 been the head of the Split Regional Finance Department of the Ministry of Defence, which was in charge of financial

matters for the 3rd Operational Zone. He testified that he had been aware that members of the 40th Engineering Brigade had been carrying out demining work up to April 1998 and that the commander of the 3rd Operational Zone had been submitting lists of servicemen who carried out demining work for payment. Since payment was not forthcoming when the allowances fell due, the General Staff of the Croatian Armed Forces had informed the relevant financial departments that the allowances had not been paid because no funds had been allocated in the budget for that purpose, whereas no instructions had been given to dispute the right to receive allowances or their amount.

13. On 3 March 2003 the Knin Municipal Court ruled in favour of the applicant and ordered the State to pay him the allowances he sought. The relevant part of that judgment read as follows:

> "[It] is undisputed that ... when each instalment became due, up to 21 February 2002, the plaintiff asked his commanding officer when the payment would be made, because according to the internal organisation of [the Ministry of Defence] that was the only person he was authorised to approach, and that [his] commanding officer took this up on behalf of the plaintiff with the Headquarters of the 3rd Operational Zone and that the commander of the 3rd Operational Zone informed [the plaintiff's] commanding officer that the right to receive payment and its amount were not in dispute, and that payment would follow after the funds had been allocated in the budget, because currently there were none; the commanding officer passed this information on to the plaintiff.
>
> The foregoing, in the view of this court, represents acknowledgement of the debt within the meaning of section 387 of the Obligations Act, because ... the plaintiff was informed by the person authorised to act on behalf of the respondent that the right to receive payment and its amount were not in dispute and that payment would follow once funds had been allocated in the budget."

14. Following an appeal by the State, on 22 April 2003 the Šibenik County Court (*Županijski sud u Šibeniku*) quashed the first-instance judgment and remitted the case. It held that the first-instance court had failed to establish: (a) who in this case was the person authorised to acknowledge the debt on behalf of the Ministry of Defence, and (b) whether the signed and certified lists of the members of the applicant's unit who had carried out demining work, indicating the number of days on which they had done such work and the corresponding amount of daily allowances, processed by the Ministry's Finance Department, in fact constituted requests for payment and therefore an indirect acknowledgment of the debt.

15. In the resumed proceedings, the Knin Municipal Court again heard the head of the Split Regional Finance Department of the Ministry of Defence, Brigadier I.P., who testified that the certified lists of servicemen who had carried out demining work constituted requests for payment of the allowances. He further stated that after receiving the lists the Split Regional Finance Department had checked them for accuracy and submitted them together with the requisite form, which in fact constituted a request for payment, to the Central Finance Department of the Ministry of Defence in

Zagreb. According to I.P., the Central Finance Department had been authorised to check the lists and could have returned them to the Regional Finance Department if the request for payment of allowances or their amount had been invalid, which they had not done. After the Split Regional Finance Department had submitted the lists and request for payment, the head of the Central Finance Department had informed him that payment would follow once funds had been allocated in the budget for that purpose. Had there been funds, no further action would have been required for the amount requested to be transferred to the applicant's bank account.

16. In these resumed proceedings, the respondent argued for the first time that, in accordance with the internal regulations of the Ministry of Defence, the person authorised to acknowledge the debt on behalf of the Ministry was the head of its Finance Department before a court action had been brought, and afterwards the head of the Legal Department.

17. On 18 June 2003 the Municipal Court again ruled in favour of the plaintiff. The relevant part of that judgment read as follows:

> "The Split Regional Finance Department certified the above-mentioned payment lists ... by first checking that the payment and its amount were justified, and then sent it, together with the [requisite] form, namely the payment request form, to the Central Finance Department ... in Zagreb. [That Department], by not returning the lists and the request for payment to the Split Regional Finance Department, accepted them as justified and well-founded. [The Central Finance Department] had to pay the amounts [sought] because the Split Regional Finance Department did not have ready money. After receiving those [lists and] the request for payment, the Central Finance Department had informed the Split Department that payment would follow once funds had been allocated in the State budget, of which the plaintiff was notified and which was explained to him by his commanding officer between the [time the instalments] became due and 21 February 2002.
>
> The foregoing, in view of this court, represents acknowledgement of the debt because, by certifying the payment lists with the payment request form and informing the plaintiff thereof as well as of the fact that payment would follow once funds had been allocated in the State budget, the plaintiff, as the creditor, was informed by the respondent, as the debtor, in a clear and unequivocal manner, that the claim at issue, that is, the respondent's debt, was being acknowledged."

18. Following an appeal by the State, on 8 March 2004 the Šibenik County Court again quashed the first-instance judgment and remitted the case. It held that from the case file it followed that in accordance with the internal regulations of the Ministry of Defence the person authorised to acknowledge the debt on behalf of the Ministry had been the head of its Finance Department before the action was brought, and afterwards the head of the Legal Department. Therefore, the applicant's commanding officer could not have acknowledged the debt on behalf of the Ministry.

19. In the resumed proceedings, the Knin Municipal Court, in order to establish who was the person authorised to acknowledge the debt on behalf of the Ministry of Defence, heard the head of the Central Finance

Department of the Ministry of Defence, and examined the internal regulations of the Ministry.

20. The head of the Ministry's Central Finance Department, I.H., testified that the person authorised to acknowledge the debt on behalf of the Ministry had indeed been the head of its Central Finance Department before the action was brought and the head of its Legal Department afterwards. He also testified that the Split Regional Finance Department's request for payment of daily allowances for demining work had been deemed invalid by a letter of 29 October 1998 because the Decision of the Minister of Defence of 18 September 1995 applied only to the Danube region of Croatia.

21. On 19 April 2005 the Municipal Court ruled for the third time in favour of the plaintiff. The relevant part of that judgment read as follows:

> "In line with the internal organisation of [the Ministry], the plaintiff, after [the daily allowances had become due but] payment had not been forthcoming, had been addressing his requests for payment to his immediate superior, that is to the commander of his unit, whereupon he [the commander] had on behalf of the plaintiff been contacting the commander of the 3rd Operational Zone of the Croatian Armed Forces. The commander of the 3rd Operational Zone had been forwarding such requests to the General Staff of the Croatian Armed Forces, which had been replying that the right to receive payment and its amount were being acknowledged, and that payment would follow once funds had been allocated for that purpose. The commander of the 3rd Operational Zone had been sending that information to the commander of the [plaintiff's] unit, who had been notifying the plaintiff of this between June 1998 and May 2002, when the commander of the unit received the last information from the commander of the 3rd Operational Zone.
>
> In this way authorised and responsible persons and the department [within the Ministry], in particular the commander of the 40th Engineering Brigade, the commander of the 3rd Operational Zone ... and the competent Regional Finance Department, which certified and acknowledged the amounts of daily allowances as costs of [the Ministry], and in the form of a request for transfer of funds corresponding to the amounts sought ..., submitted them to [the Ministry's Central Finance Department], acknowledged the debt to the plaintiff in a clear and unequivocal manner.
>
> Accordingly, the respondent's argument raised in the course of the proceedings that only the head of [the Central Finance Service] or the head of the Legal Department were authorised to acknowledge the debt on behalf of the Ministry, is unfounded because this does not follow from the evidence taken, especially from the documents provided by the respondent, in particular from [the internal regulations of the Ministry of Defence], and [because] the time-limits fixed by the court at the request of the respondent's representative for furnishing evidence [in support of that argument] had expired.
>
> ...
>
> ... from the letter of 29 October 1998 it does not follow that the request of the [Split] Regional Finance Department had been regarded as invalid. [Rather], it was only returned to the [Split Regional Finance] Department for additional examination and

checking, and it was suggested that afterwards the Regional Finance Department should decide on the right to receive payment of the allowances at issue.

Consequently, in the light of the foregoing, this court indisputably established that authorised persons of the respondent had continued, throughout the entire period in dispute, that is, from the time the claims had become due until May 2002, to inform the plaintiff in a clear and unequivocal manner that the respondent did not dispute [his] right to receive daily allowances in the amount sought. [T]hereby, the respondent acknowledged the debt to the plaintiff within the meaning of section 387 of the Obligations Act, so it is clear that the statutory limitation period did not expire, because its running was interrupted by the acknowledgment of the debt."

22. Following an appeal by the State, on 24 October 2005 the Šibenik County Court reversed the first-instance judgment by dismissing the applicant's action. The relevant part of that judgment read as follows:

"On the basis of the evidence taken, the first-instance court established the following relevant facts:

- that the plaintiff, as a member of the 40th Engineering Brigade of the Croatian Army at the material time, under the command of the 3rd Operational Zone of the Croatian Armed Forces, had occasionally carried out demining work during 1996, 1997 and 1998;

- that the Decision [of the Minister of Defence of 18 September 1995] had established the right of the ... members of the Croatian Armed Forces to a special daily allowance for demining work;

- that, in accordance with the [above] Decision, the commander of the 40th Engineering Brigade had been compiling monthly lists of members of the unit who in a particular month had carried out demining work, and had specified the number of days spent on demining work and the corresponding amounts of daily allowances due, and that [those lists] had been certified and co-signed by the commander of the 3rd Operational Zone of the Croatian Armed Forces and submitted to the Split Regional Finance Department of the [Ministry of Defence];

- that the plaintiff, when the special daily allowances were not paid, on numerous occasions approached the commander of his unit, in accordance with the hierarchical organisation of the [Ministry] ... with a query as to when the payment would be made, and that [his commander], after making enquiries of the command of the 3rd Operational Zone, informed him that his claims were not in dispute... and that payment would follow after funds had been allocated for that purpose.

Relying on these facts, the first-instance court found that that the authorised persons of the respondent (the commander of the 40th Engineering Brigade, the commander of the 3rd Operational Zone of the Croatian Armed Forces, as well as the Split Regional Finance Department – which had certified and acknowledged the amount of the plaintiff's special daily allowances as costs of the respondent and had submitted it in the form of a request to the [Central] Finance Department of the [Ministry for transfer of the amount sought]) – had, throughout the entire period in dispute, until May 2002, unequivocally informed the plaintiff that the respondent did not dispute [his] right to receive daily allowances in the amount sought, and that the respondent had thereby acknowledged the debt to the plaintiff within the meaning of section 387 of the Obligations Act, so the statutory limitation period had not expired.

However, having regard to the evidence taken before the first-instance court, this court considers the above finding of the first-instance court erroneous. [This is so] because, contrary to the view of the first-instance court, and in accordance with the hierarchical organisation of the [Ministry], the persons authorised to acknowledge the debt on behalf of the [Ministry] were the head of [its Central] Finance Department – which Department, in accordance with the [Ministry's] internal regulations, was authorised to ultimately process and check the requests for payment of the plaintiff's claims submitted by the Split Regional Finance Department (until the action was brought in this case) – and the head of the [Ministry's] Legal Department (during the present proceedings), as the respondent correctly argued ... as well as the other authorised persons who were, in accordance with the hierarchical organisation of the [Ministry], superior to [them].

That being so, and having regard to the facts established in the proceedings before the first-instance court, it does not follow that it was precisely those authorised persons mentioned above who acknowledged the debt by making a declaration to the plaintiff as the creditor, nor that the debt was acknowledged in some indirect manner within the meaning of paragraph 2 of section 387 of the Obligations Act. [O]n the contrary, the request of the Split Regional Finance Department to transfer funds [corresponding to the amounts of daily allowances sought] (which request, together with signed and certified lists compiled by the 40th Engineering Brigade, cannot be considered an acknowledgement of the debt within the meaning of section 387 of the Obligations Act) ... was regarded as invalid by the Central Finance Department and returned to the Split Regional Finance Department for further checking and additional examination (...). [T]herefore, in the instant case the respondent did not acknowledge the plaintiff's claims in any manner prescribed by law that would lead to an interruption of the statutory limitation period. [S]ince the last monthly instalment of special daily allowances had become due in April 1998, and the action in this case had been brought on 21 May 2001, the [respondent's] plea that the claims at issue were statute-barred, ... is well-founded because the three-year statutory limitation period set forth in section 131 of the Labour Act in respect of the plaintiff's claims, which arose from his employment relationship with the respondent, had expired in the instant case."

23. The applicant then lodged a constitutional complaint against the second-instance judgment, alleging violations of his constitutional rights to equality before the courts and to a fair hearing. He argued that his claim for special daily allowances for demining work was not statute-barred, because the Ministry of Defence had on several occasions acknowledged the debt, thereby interrupting the running of the statutory limitation period, and that the Šibenik County Court had not relied on any provision of substantive law which would justify dismissal of his action.

24. On 10 April 2008 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed the applicant's constitutional complaint and served its decision on his representative on 8 May 2008.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

1. Relevant provisions

25. The relevant part of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette nos. 56/1990, 135/1997, 8/1998 (consolidated text), 113/2000, 124/2000 (consolidated text), 28/2001 and 41/2001 (consolidated text), 55/2001 (corrigendum)) provides as follows:

Article 26

"All citizens of the Republic of Croatia and foreigners shall be equal before the courts and other state or public authorities."

Article 29 (1)

"In the determination of his rights and obligations or of any criminal charge against him, everyone is entitled to a fair hearing within a reasonable time by an independent and impartial court established by law."

Article 48

"1. The right of ownership shall be guaranteed.

2. Ownership implies duties. Owners and users of property shall contribute to the general welfare."

Article 50

"1. Ownership may be restricted or taken in accordance with the law and in the interest of the Republic of Croatia subject to payment of compensation equal to the market value.

2. The exercise ... of the right of ownership may, on an exceptional basis, be restricted by law for the protection of the interests and security of the Republic of Croatia, nature, the environment or public health."

Article 140

"International agreements in force, which were concluded and ratified in accordance with the Constitution and made public, shall be part of the internal legal order of the Republic of Croatia and shall have precedence over the [domestic] statutes. ..."

2. The Constitutional Court's jurisprudence

26. In its decisions nos. U-I-892/1994 of 14 November 1994 (Official Gazette no. 83/1994) and U-I-130/1995 of 20 February 1995 (Official Gazette no. 112/1995) the Constitutional Court held that all rights guaranteed in the Convention and its Protocols were also to be considered constitutional rights having legal force equal to the provisions of the Constitution.

B. The Constitutional Court Act

1. Relevant provisions

27. The relevant part of the 1999 Constitutional Act on the Constitutional Court of the Republic of Croatia (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette no. 99/1999 of 29 September 1999 – "the Constitutional Court Act"), as amended by the 2002 Amendments (*Ustavni zakon o izmjenama i dopunama Ustavnog zakona o Ustavnom sudu Republike Hrvatske*, Official Gazette no. 29/2002 of 22 March 2002), which entered into force on 15 March 2002, reads as follows:

Section 62

"1. Anyone may lodge a constitutional complaint with the Constitutional Court if he or she deems that the decision of a state authority, local or regional self-government, or a legal person invested with public authority, on his or her rights or obligations, or as regards suspicion or accusation of a criminal offence, has violated his or her human rights or fundamental freedoms, or right to local or regional self-government, guaranteed by the Constitution ("constitutional right")...

2. If another legal remedy is available in respect of the violation of the constitutional rights [complained of], the constitutional complaint may be lodged only after this remedy has been exhausted.

3. In matters in which an administrative action or, in civil and non-contentious proceedings, an appeal on points of law [*revizija*] are available, remedies shall be considered exhausted only after the decision on these legal remedies has been given."

Section 65 (1)

"A constitutional complaint shall contain ... an indication of the constitutional right alleged to have been violated [together] with an indication of the relevant provision of the Constitution guaranteeing that right..."

Section 71 (1)

" ... [t]he Constitutional Court shall examine only the violations of constitutional rights alleged in the constitutional complaint."

2. The Constitutional Court's jurisprudence

28. On 9 July 2001 the Constitutional Court delivered a decision, no. U-III-368/1999 (Official Gazette no. 65/2001) in a case where the complainant relied in her constitutional complaint on Articles 3 and 19(1) of the Constitution, neither of which, under that court's jurisprudence, contained constitutional rights. The Constitutional Court nevertheless allowed the constitutional complaint, finding violations of Articles 14, 19(2) and 26 of the Constitution, on which the complainant had not relied, and quashed the contested decisions. In so deciding it held as follows:

> "Therefore, a constitutional complaint cannot be based on either of the constitutional provisions stated [by the complainant in her constitutional complaint].
>
> However, the present case concerns, as will be explained further, a specific legal situation as a result of which this court, despite [its] finding that there are not, and cannot be, violations of the constitutional rights explicitly relied on by the complainant, considers that there are circumstances which warrant quashing [the contested] decisions.
>
> ...
>
> Namely, it is evident from the constitutional complaint and the case file that there have been violations of [constitutional] rights, in particular those guaranteed by Article 14 (equality, equality before the law), Article 19 paragraph 2 (the guarantee of judicial review of decisions of state and other public authorities) and Article 26 (equality before the courts and other state or public authorities) of the Constitution ..."

C. The Obligations Act

1. Relevant provisions

29. Section 387 of the Obligations Act (*Zakon o obveznim odnosima*, Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 29/1978, 39/1985 and 57/1989, and the Official Gazette of the Republic of Croatia no. 53/1991 with subsequent amendments) provided as follows:

STATUTE OF LIMITATIONS

GENERAL PROVISIONS

General rule

Section 360

> "(1) The right to request performance of an obligation shall be extinguished on the expiration of a statutory limitation period.
>
> (2) ...

(3) A court shall not take a statutory limitation period into account of its own motion if the debtor did not plead it."

INTERRUPTION OF A STATUTORY LIMITATION PERIOD

Acknowledgement of a debt

Section 387

"(1) The running of a statutory limitation period shall be interrupted when the debtor acknowledges his or her debt.

(2) A debt may be acknowledged not only by a statement [that is, a declaration] to the creditor but also in an indirect manner, such as by making a payment, paying interest or providing security..."

2. The Supreme Court's practice

30. In interpreting section 387 of the Obligations Act the Supreme Court has consistently held that acknowledgement of a debt capable of interrupting a statutory limitation period, regardless of whether it has been made in a direct or indirect manner, has to be done unequivocally and by the persons authorised to act on behalf of the debtor (see, for example, decisions nos. Rev 3053/1999-2 of 23 January 2002, Rev 271/03-2 of 12 April 2005, Rev 347/04-2 of 21 June 2005, Revt 97/03-2 of 22 December 2005, and Revt 156/2006-2 of 29 November 2006).

31. On 25 May 2000 the Supreme Court delivered a judgment, no. Rev 1401/1999-2, in a case in which the plaintiffs sued the State seeking payment of unpaid salaries for the period during which they had been receiving medical treatment and held captive by the enemy, respectively. The question arose whether the letter of the Ministry of Defence, in particular, the General Staff of the Croatian Armed Forces, of 9 February 1998, confirming that the plaintiffs had been members of their military unit and had appeared on its payroll but had not collected their salaries in the above-mentioned period, constituted acknowledgment of the debt. The lower courts dismissed the plaintiffs' action, finding that the letter had not constituted acknowledgement of a debt capable of interrupting the statutory limitation period. In dismissing an appeal on points of law (*revizija*) by the plaintiffs and upholding the lower courts' judgments, the Supreme Court held as follows:

"From [the letter of 9 February 1998] it only follows that the plaintiffs were members of a certain unit at a certain time and that they did not receive a salary for that period. Such [a letter] cannot *per se* constitute an acknowledgment of the debt within the meaning of section 366 of the Obligations Act and interruption of the statutory limitation period. That is a general statement which cannot be considered as an acknowledgment of the debt. The ... letter indicates that the debt may exist but it does not constitute an acknowledgement by the debtor that the debt [indeed] exists, that is, acknowledgment that the debtor has [an obligation] to settle the debt or that the debtor will settle it. The statement of facts by the debtor, on the basis of which it

could be concluded that the debt exists, does not constitute acknowledgment of the debt [capable of] interrupting the statutory limitation period. For the acknowledgement of the debt to result in the interruption of the statutory limitation period, it has to be explicit and specific so that the debtor's will to settle the existing debt is unequivocally expressed."

32. On 27 September 2007 the Supreme Court delivered a decision, no. Rev-427/2006-2, in a case where the plaintiff company sued the State seeking payment of a certain amount of money. The question arose whether a letter of 15 May 1996 signed on behalf of the Finance Department of the Ministry of Defence by the head of its Bookkeeping Division informing the plaintiff that its claim had been recorded with the Ministry's Finance Department but that funds had not been allocated to satisfy that claim, as well as a letter of 6 November 1997 signed on behalf of the Finance Department of the Ministry of Defence by the head of its Payment Operations Division notifying the plaintiff that the Ministry would settle its debt by transferring the money to the plaintiff company's giro account upon transfer of the funds to the Ministry from the State budget, amounted to acknowledgment of the debt. The lower courts ruled in favour of the plaintiff, finding that the above-mentioned letters had constituted acknowledgement of a debt capable of interrupting the statutory limitation period. The Supreme Court allowed an appeal on points of law by the State, quashed the lower courts' judgments and remitted the case. In so deciding the Supreme Court held as follows:

"In the contested judgments no reasons were given for the finding that the head of the Bookkeeping Division, who had signed the letter of 15 May 1996, would be authorised to acknowledge the debt (even assuming that the mere recording of the claim and its amount with the Finance Department of the Ministry of Defence could be considered an acknowledgment of the debt).

... the letter of 6 November 1997 [containing] the statement that its [the Ministry's] debt would be settled by transferring the money to the [plaintiff company's] giro account, but without establishing the amount of the debt that the respondent considered well-founded, and without establishing whether ... the head of the Payment Operations Division (who signed the letter) was authorised to give such a statement, cannot, at least for the time being, be considered an acknowledgment of the debt.

In this court's view, an acknowledgement of a debt within the meaning of section 387 paragraph 2 of the Obligations Act can be made by the debtor personally or through an authorised person (if the debtor is a legal entity). It follows from the foregoing that declarations of unauthorised persons acknowledging a debt on behalf of a debtor cannot produce for the debtor any legal effects of a valid acknowledgement of a debt. It also has to be noted that an acknowledgement of a debt must not be contrary to peremptory norms [*jus cogens*].

For these reasons, until it is established whether, and on the basis of which legal document, the head of the Bookkeeping Division and the head of the Payment Operations Division were persons authorised to acknowledge the debt, there can be no conclusions as to the legal significance of the letters of 15 May 1996 and 6 November 1997."

3. The doctrine

33. According to the views expressed in Croatian legal doctrine, a right is not extinguished by the expiration of a statutory limitation period. Rather, the creditor only loses the right to seek its enforcement through the courts. Therefore, a debtor remains a debtor even after a statutory limitation period has expired. For that reason, if a debtor pays a creditor after the expiry of a statutory limitation period, he or she cannot claim the amount paid back (on account of unjust enrichment) because he or she paid an existing debt

D. The Labour Act

34. Section 131 of the Labour Act (*Zakon o radu*, Official Gazette nos. 38/95, 54/95 (corrigendum), 65/95 (corrigendum), 17/01, 82/01, 114/03, 123/03, 142/03 (corrigendum) and 30/04) provides as follows:

Statutory limitation period for an employment-related claim

Section 131

"Unless otherwise provided in this or another statute, an employment-related claim expires after three years."

E. The Civil Procedure Act

35. The relevant part of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 4/1977, 36/1977 (corrigendum), 36/1980, 69/1982, 58/1984, 74/1987, 57/1989, 20/1990, 27/1990 and 35/1991, and the Official Gazette of the Republic of Croatia nos. 53/1991, 91/1992, 58/1993, 112/1999, 88/2001, 117/2003, 88/2005, 2/2007, 84/2008 and 123/2008) provides as follows:

Section 186 (3)

"The court shall proceed on an action even if the plaintiff has not indicated the legal basis for his or her claim; and if the plaintiff has indicated the legal basis the court shall not be bound by it."

Reopening of proceedings following a final judgment of the European Court of Human Rights in Strasbourg finding a violation of a fundamental human right or freedom

Section 428a

"(1) When the European Court of Human Rights has found a violation of a human right or fundamental freedom guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms or additional protocols thereto ratified by the Republic of Croatia, a party may, within thirty days of the judgment of the

European Court of Human Rights becoming final, file a petition with the court in the Republic of Croatia which adjudicated in the first instance in the proceedings in which the decision violating the human right or fundamental freedom was rendered, to set aside the decision by which the human right or fundamental freedom was violated.

(2) The proceedings referred to in paragraph 1 of this section shall be conducted by applying, *mutatis mutandis*, the provisions on the reopening of proceedings.

(3) In the reopened proceedings the courts are required to respect the legal opinions expressed in the final judgment of the European Court of Human Rights finding a violation of a fundamental human right or freedom."

F. The Decision of the Minister of Defence of 18 September 1995

36. Decision of the Minister of Defence on Payment of Special Daily Allowances for Carrying Out Mining and Demining Works (*Odluka o isplatama posebnih dnevnica za vrijeme izvođenja radova na miniranju i deminiranju*, unpublished) of 18 September 1995 reads as follows:

"1. Permanent and reserve members of the Armed Forces of the Republic of Croatia carrying out mining and demining works shall have the right to special daily allowances.

2. Special allowances shall be calculated in the amounts prescribed by the Decision on the Amount of Daily Allowance for Official Journeys and the Amount of Compensation for Users Financed from the State Budget [that is, 123 Croatian kunas (HRK) at the time], and so from the time of departure to [carry out] mining and demining works, according to the following criteria:

(a) the entire daily allowance for every twenty-four hours spent on mining and demining works, including periods of twelve to twenty-four hours [that is, between twelve and twenty-four hours];

(b) half the daily allowance for periods of eight to twelve hours.

3. The lists of persons entitled to special daily allowances, with details, shall be compiled by the commander at independent battalion level or higher, and shall be certified by the commander of the operational zone ... The certified list shall be submitted for payment to the regional finance department on whose territory mining and demining works have been carried out, at the latest on the third day of the month in respect of the preceding month.

4. This Decision shall enter into force on the day of its adoption, and shall be applicable from 1 June 1995."

THE LAW

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

37. The applicant complained that the refusal of the domestic courts to grant his claims for special daily allowances for demining work infringed his right to peaceful enjoyment of his possessions. 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."

38. The Government contested that argument.

A. Admissibility

39. The Government disputed the admissibility of this complaint on two grounds, namely, that it was incompatible *ratione materiae* with the provisions of the Convention and that the applicant had failed to exhaust domestic remedies.

1. *Compatibility* ratione materiae

(a) The arguments of the parties

40. The Government first emphasised that the applicant's complaint related to his claims for special daily allowance for demining work the applicant had carried out as a military serviceman. They further noted that in the *Baneković* case (see *Baneković v. Croatia* (dec.), no. 41730/02, 23 September 2004), the Court had established that employment disputes between the authorities and public servants whose duties typify the specific activities of the public service, in so far as the latter is acting as the depository of public authority responsible for protecting the general interests of the State, were excluded from the scope of the Convention. The Court had further noted that a manifest example of such activities was provided by the armed forces and the police. Bearing in mind the fact that the applicant's complaint in the present case related to his work in active military service, the Government deemed that the provisions of the Convention were not applicable to it.

41. The applicant replied that the Government's reference to the *Baneković* case in support of their argument that the present complaint was incompatible *ratione materiae* was rather superficial. In that case the Court had not held, as the Government suggested, that employment disputes between the authorities and public servants were excluded "from the scope of the (entire) Convention" but only from the scope of Article 6 § 1 thereof. For that reason, in the *Baneković* case the Court had declared inadmissible, as incompatible *ratione materiae*, the applicant's complaint under Article 6 § 1 of the Convention. The present complaint however concerned the right to peaceful enjoyment of possessions guaranteed by Article 1 of Protocol No. 1 to the Convention.

(b) The Court's assessment

42. The Court notes that in the *Baneković* case to which the Government referred, the applicant, a police officer, complained under Article 6 § 1 of the Convention of the unfairness and the excessive length of civil proceedings in which he had sought payment of a salary increase. It was precisely the complaint under that Article (together with related complaints under Articles 13 and 14) that the Court, applying the principles enunciated in the *Pellegrin* case (see *Pellegrin v. France* [GC], no. 28541/95, ECHR 1999-VIII), declared inadmissible *ratione materiae* in the *Baneković* case. Given that the applicant in the present case, in complaining about the refusal of the domestic courts to award him special daily allowances for demining work, relied on Article 1 of Protocol No. 1 to the Convention, the Government's argument appears misconceived.

43. What is more, the Court reiterates that in the case of *Vilho Eskelinen and Others* (see *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, ECHR 2007-IV) it revisited and abandoned the *Pellegrin* jurisprudence. Therefore, the Government's reliance on the *Baneković* case is not relevant even to the applicant's complaint under Article 6 § 1 of the Convention (see paragraphs 80-82 below).

44. It follows that the Government's objection as to incompatibility *ratione materiae* must be dismissed.

2. Non-exhaustion of domestic remedies

(a) The arguments of the parties

45. The Government further argued that the applicant had not complained of a violation of his right to peaceful enjoyment of his possessions in the proceedings before the domestic courts. In particular, in his constitutional complaint the applicant had only complained of violations of his constitutional rights to equality before the courts and a fair hearing, which corresponded in substance to Article 6 of the Convention.

46. The applicant replied that his complaint before the domestic courts had in essence always been the same, as he had always sought payment of

special daily allowances for demining work. Referring to the principle of *iura novit curia* embodied in section 186(3) of the Civil Procedure Act (see paragraph 35 above), he argued that it had been for the domestic courts, including the Constitutional Court, to legally qualify his claim.

(b) The Court's assessment

47. The Court notes that under Croatian law, in particular section 186(3) of the Civil Procedure Act (see paragraph 35 above), civil courts are under an obligation to consider all relevant rules of law which could support a plaintiff's claim. This includes the Convention and its Protocols, which in Croatia not only takes precedence over domestic statutes but the rights enshrined therein are considered constitutional rights (see paragraphs 25 and 26 above).

48. However, it would appear that the principle of *iura novit curia* does not apply in the proceedings before the Constitutional Court because, under section 71(1) of the Constitutional Court Act, the Constitutional Court examines only the violations of the constitutional rights alleged in the constitutional complaint (see paragraph 27 above). From the applicant's constitutional complaint (see paragraph 23 above), it appears that he did not rely on Article 48 and/or 50 of the Constitution (see paragraph 25 above), which are the provisions that arguably correspond to Article 1 of Protocol No. 1 to the Convention. Nor did he rely on Article 1 of Protocol No. 1 directly. Instead, he referred principally to Articles 26 and 29(1) 33 (2) of the Constitution (see paragraph 25 above), which are the provisions that correspond to Article 6 § 1 of the Convention.

49. Admittedly, section 65(1) of the Constitutional Court Act requires complainants to indicate in their constitutional complaints the constitutional right which has allegedly been violated as well as the relevant provision of the Constitution guaranteeing that right (see paragraph 27 above). Likewise, section 71(1) of the same Act provides that the Constitutional Court examines only the violations of the constitutional rights alleged in the constitutional complaint (see paragraph 27 above). This rule, however, is not as absolute as the Government suggested. From the Constitutional Court's decision no. U-III-363/1999 of 9 July 2001 (see paragraph 28 above) it follows that in certain cases it is not necessary to plead the relevant Article of the Constitution, as it may be sufficient that a violation of a constitutional right is apparent from the complainant's submissions and the case file (see, *mutatis mutandis*, *Glasenapp v. Germany*, 28 August 1986, § 45, Series A no. 104).

50. Therefore, while it is true that in his constitutional complaint the applicant did not explicitly rely on Article 1 of Protocol No. 1 to the Convention or the corresponding provisions of the Constitution, he did complain about the refusal of the Šibenik County Court to grant his claim for daily allowances for demining work (see paragraph 23 above) .

51. In these circumstances, the Court considers that the applicant, having raised the issue in substance in his constitutional complaint, did ventilate before the domestic courts the grievance which he has submitted to the Court. He thereby provided the national authorities with the opportunity which is in principle intended to be afforded to Contracting States by Article 35 § 1 of the Convention, namely of putting right the violations alleged against them (see *Glasenapp*, cited above, § 44, and *X v. Germany*, no. 9228/80, Commission decision of 16 December 1982, Decisions and Reports (DR) 11, pp. 142-43).

52. It follows that the Government's objection concerning non-exhaustion of domestic remedies must also be dismissed.

53. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. As to whether the applicant's claims constituted 'possessions'

(a) The arguments of the parties

54. The Government first submitted that the applicant's claims did not amount to "possessions" within the meaning of Article 1 of Protocol No. 1 to the Convention. Relying on the case of *Vilho Eskelinen and Others* (cited above, § 94), they argued that the Convention did not guarantee the right to a salary of a particular amount and noted that the applicant's claim related in substance to the level of his salary, a right not covered by the Convention. Moreover, at the time he had brought his action his claims had already been statute-barred, so he could not have had a legitimate expectation that they would be granted. As a result, Article 1 of Protocol No. 1 was not applicable to the case.

55. The applicant replied that the existence of his claims for special daily allowances for demining work and their amounts had never been disputed by the domestic authorities. What had been disputed was why they had not been paid. He therefore argued that his claims did constitute "possessions" within the meaning of Article 1 of Protocol No. 1 to the Convention and the Court's case-law. The applicant also added that his claims had been based on the Decision of the Minister of Defence of 18 September 1995 and that therefore his case was distinguishable from the case of *Vilho Eskelinen and Others*, relied on by the Government.

(b) The Court's assessment

56. The Court reiterates that an applicant may allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions relate to his or her "possessions" within the meaning of that provision. "Possessions" can be "existing possessions" or claims that are sufficiently established to be regarded as "assets". Where, as in the present case, a proprietary interest is in the nature of a claim, it may be regarded as an "asset" only if there is a sufficient basis for that interest in national law (for example, where there is settled case-law of the domestic courts confirming it), that is, when the claim is sufficiently established to be enforceable (see *Kopecký v. Slovakia* [GC], no. 44912/98, §§ 49 and 52, ECHR 2004-IX, and *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 59, Series A no. 301-B).

57. Turning to the present case, the Court first notes that the Decision of the Minister of Defence of 18 September 1995 provided for a special daily allowance for the members of the Croatian Army carrying out mining and demining work. It follows from the findings of the domestic courts (see paragraphs 21-22 above) that it was uncontested: (a) that during 1996, 1997 and 1998 the applicant, as a serviceman, occasionally carried out demining work; (b) that his name figured on the monthly lists of members of the 40th Engineering Brigade who carried out demining work, which lists were compiled by the commander of that unit indicating the number of days spent on demining works and related amounts of daily allowances; (c) that those lists were signed by the applicant's commanding officer, then co-signed and certified by the commander of the 3rd Operational Zone of the Croatian Armed Forces, and eventually submitted for payment to the Split Regional Finance Department of the Ministry of Defence. It would therefore appear that all the conditions for acquiring the right to special daily allowances for demining work set forth in the Decision of the Minister of Defence of 18 September 1995 (see paragraph 36 above) were met in the applicant's case. The Court thus considers that the applicant's claims had a sufficient basis in national law to qualify as "assets" protected by Article 1 of Protocol No. 1 to the Convention (see, for example, *Cazacu v. Moldova*, no. 40117/02, § 43, 23 October 2007).

58. As to the Government's arguments to the contrary, the Court first notes that in its judgment in the case of *Vilho Eskelinen and Others* it held that there is no right under the Convention to continue to be paid a salary of a particular amount (see *Vilho Eskelinen and Others*, cited above, § 94), and not, as the Government suggested, the right to a salary of a particular amount. On the contrary, the Convention organs have consistently held that income that has been earned does constitute a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention (see, for example, *Bahçeyaka v. Turkey*, no. 74463/01, § 34, 13 July 2006; *Erkan v. Turkey* (dec.), no. 29840/03, 24 March 2005; *Schettini and others v. Italy* (dec.), no. 29529/95, 9 November 2000; and *Størksen v. Norway*, no. 19819/92,

Commission decision of 5 July 1994). The Court further notes that under Croatian law, in particular section 360(1) of the Obligations Act, a pecuniary right can no longer be enforced through the courts upon the expiration of a statutory limitation period but the right itself is not extinguished (see paragraphs 29 and 33 above). It follows that, even assuming that the statutory limitation period had indeed expired in the applicant's case, it could not be argued that his claims for special daily allowances for demining work did not qualify as "assets" and thus did not constitute "possessions" within the meaning of Article 1 of Protocol No. 1 to the Convention.

2. Whether there was an interference with the peaceful enjoyment of "possessions"

(a) The arguments of the parties

59. The Government submitted that the case did not disclose any interference with the applicant's right to peacefully enjoy his possessions and that therefore there had been no deprivation or control of possessions by the state authorities.

60. The applicant submitted that non-payment of his daily allowances for demining work constituted deprivation of possessions.

(b) The Court's assessment

61. In the light of the above finding that the applicant's claims for daily allowances for demining work were sufficiently established to qualify as an "asset" attracting the protection of Article 1 of Protocol No. 1, the Court considers that the refusal of the domestic courts to grant those claims undoubtedly constituted interference with his right to peaceful enjoyment of possessions (see *Cazacu*, cited above, § 43).

62. The Court must further examine whether that interference was justified.

3. Whether the interference was "provided for by law"

(a) The arguments of the parties

(i) The Government

63. The Government argued that the interference had been provided for by law as it had been based on section 131 of the Labour Act, which provided for a three-year statutory limitation period for employment-related claims.

64. The Government noted that the key issue in the proceedings before the domestic courts had been whether the Ministry of Defence had acknowledged the debt, and thereby interrupted the running of the statutory

limitation period. In this connection the Government first reiterated that under the Court's case-law its power to review compliance with domestic law was limited and that it was in the first place for the national authorities, notably the courts, to interpret and apply the domestic law. They further submitted that under the case-law of the Supreme Court acknowledgment of a debt was an express and specific declaration which, in the case of a legal entity, must be given by an authorised person. In the proceedings before the domestic courts the applicant had maintained that on several occasions his superiors had informed him that his claims were not in dispute and that the payment would follow once the funds had been allocated in the budget. The domestic courts had taken into account all the arguments of the applicant, examined numerous items of evidence, including the internal regulations of the Ministry of Defence, and heard key witnesses, in particular the head of the Ministry's Central Finance Department, I.H. The domestic courts had clearly explained that from the internal organisation of the Ministry of Defence it followed that the head of the Central Finance Department was superior to the Split Regional Finance Department. Since the applicant's claims had only been acknowledged by the Split Regional Finance Department, while the Central Finance Department had considered them invalid, the domestic courts had held that the Ministry of Defence had not acknowledged the debt to the applicant.

65. The Government considered that the above finding of the domestic courts was not arbitrary or unreasonable, but based on the evidence examined in the proceedings. In deciding as they did the domestic courts had acted within their margin of appreciation.

(ii) The applicant

66. The applicant argued that there had been unlawful interference with his right to peaceful enjoyment of his possessions, as the interference had either been arbitrary or failed to meet the criteria of accessibility and foreseeability.

67. The applicant first pointed out that in its judgment of 24 October 2005 the Šibenik County Court had not referred to any provision of substantive law in support of its finding that the only persons authorised to acknowledge the debt on behalf of the Ministry of Defence had been the head of its Central Finance Department, the head of its Legal Department and their superiors. Instead, that court had only vaguely referred to internal regulations of the Ministry without specifying from which provision or provisions of those regulations it had inferred its above finding. That being so, the Šibenik County Court, in the applicant's view, had indirectly admitted that no such provision had in fact existed, so its judgment could only be considered arbitrary.

68. Even assuming that the Šibenik County Court's finding had not been arbitrary and that it was supported by the Ministry's internal regulations, the applicant claimed that those regulations had been submitted to the first-

instance court for the first time at the hearing held on 14 December 2004 and had been classified as a military secret. In the applicant's view, that meant that the County Court had relied on regulations that had not been accessible to him.

69. What is more, even assuming that the Ministry's internal regulations had been accessible to him, it had been impossible to infer from these that only the head of the Ministry's Central Finance Department had been authorised to acknowledge the debt on behalf of the Ministry. Accordingly, the interference with his right to peaceful enjoyment of his possessions had not been foreseeable.

70. Lastly, regardless of the above considerations, the applicant submitted that in accordance with military hierarchy, he had been authorised to address his request for payment of his daily allowances for demining work only to his immediate superior, who, after making enquiries of his own superiors, had informed him that his claim had not been disputed and that the payment would follow after funds had been allocated in the budget. For the applicant, in these circumstances it was difficult to argue that those persons had not been authorised to acknowledge the debt to him on behalf of the Ministry.

(b) The Court's assessment

71. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 to the Convention is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful (see *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II).

72. The Court takes note of the Government's argument that the decisions of the domestic courts in the present case had a legal basis in domestic law, as their refusal to grant the applicant's claims was based on section 131 of the Labour Act (see paragraph 34 above). However, the Court also notes that the application of that provision by the domestic courts followed from their prior finding that the Ministry of Defence did not acknowledge the debt to the applicant within the meaning of section 387 of the Obligations Act – an action that would have otherwise interrupted the running of the statutory limitation period – as the debt was not acknowledged by authorised persons within the Ministry. In particular, the Šibenik County Court held in its judgment of 24 October 2005 that the only person authorised to acknowledge the debt on behalf of the Ministry before the applicant had brought his action was the head of its Central Finance Department and his superiors. Therefore, the repeated declarations of the applicant's commanding officer to the applicant, after making enquiries of his superiors up to the level of the General Staff of the Croatian Armed Forces, that his claims were not in dispute and that the allowances would be paid once funds had been allocated in the budget for that purpose, had not had the effect of acknowledging the debt (see paragraph 22 above).

73. In this connection the Court notes, as correctly pointed out by the applicant, that the Šibenik County Court in its judgment of 24 October 2005, did not rely on any specific legal provision that would support its finding that the debt could have been acknowledged on behalf of the Ministry exclusively by the head of its Central Finance Department.

74. The Court considers that an individual acting in good faith is, in principle, entitled to rely on statements made by state or public officials who appear to have the requisite authority to do so, and that internal rules and procedures were complied with, unless it clearly follows from publicly accessible documents (including primary or subordinate legislation), or an individual was otherwise aware, or should have been aware, that a certain official lacked the authority to legally bind the State. It should not be incumbent on an individual to ensure that the state authorities are adhering to their own internal rules and procedures inaccessible to the public and which are primarily designed to ensure accountability and efficiency within a state authority. A State whose authorities failed to observe their own internal rules and procedures should not be allowed to profit from their wrongdoing and escape their obligations. In other words, the risk of any mistake made by state authorities must be borne by the State and the errors must not be remedied at the expense of the individual concerned, especially where no other conflicting private interest is at stake (see *Trgo v. Croatia*, no. 35298/04, § 67, 11 June 2009; *Gashi v. Croatia*, no. 32457/05, § 40, 13 December 2007; and *Radchikov v. Russia*, no. 65582/01, § 50, 24 May 2007).

75. The Court accepts that sometimes the authority of a particular official to legally bind the State may be inferred from the nature of his or her office and requires no explicit rule or provision. In view of that possibility, in their observations on the admissibility and merits of the application of 3 April 2009 the Government, instead of relying, explicitly or by reference, on some domestic legal provision on which the above-mentioned finding of the Šibenik County Court could be based, simply argued that the court's finding had been inferred from the internal organisation of the Ministry of Defence (see paragraph 64 above). The Court will accordingly examine whether that finding was foreseeable for the applicant in the circumstances of the case (see, *mutatis mutandis*, *Sun v. Russia*, no. 31004/02, § 29).

76. In this connection the Court first reiterates that the principle of lawfulness also presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application. An individual must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see, for example, *Sun*, cited above, § 27, and *Adzhigovich v. Russia*, no. 23202/05, § 29, 8 October 2009). The principle of lawfulness also requires the Court to verify whether the way in which the domestic law is interpreted and applied by the domestic courts produces

consequences that are consistent with the principles of the Convention (see, for example, *Apostolidi and Others v. Turkey*, no. 45628/99, § 70, 27 March 2007, and *Nacaryan and Deryan v. Turkey*, nos. 19558/02 and 27904/02, § 58, 8 January 2008).

77. In this connection the Court notes that the domestic courts established beyond doubt that the applicant had been repeatedly informed by his commanding officer that his claims for daily allowances for demining work were not in dispute and that they would be paid once funds had been allocated in the budget for that purpose (see paragraphs 21-22 above). For the Court the question to be answered is not whether it was plausible, as the Šibenik County Court found, that only the head of the Central Finance Department of the Ministry of Defence was authorised to acknowledge the debt. Rather, the question is whether, in the absence of a clear legal provision or a publicly available document that would support that finding, it was equally plausible for the applicant – who, under the rules of the military hierarchy, could have addressed his request only to his immediate superior – to assume that the information repeatedly communicated to him by his commanding officer came from a person or persons within the Ministry who had the authority to acknowledge the debt. In this respect the Court notes that the applicant was aware that his commanding officer had made enquiries of his own superiors and that the information eventually conveyed to him came, through the commander of the 3rd Operational Zone, from the General Staff of the Croatian Armed Forces. In the Court's view, in the absence of a clear legal provision or publicly accessible documents as to who was authorised to acknowledge the debt on behalf of the Ministry of Defence, it was quite natural for the applicant to believe that the General Staff of the Croatian Armed Forces was an authority of sufficient rank whose statements could be binding on the Ministry.

78. Therefore, having regard to the Šibenik County Court's failure to indicate a legal provision that could be construed as the basis for its finding that the debt could have been acknowledged only by the head of the Central Finance Department of the Ministry of Defence, the Court finds the impugned interference was incompatible with the principle of lawfulness and therefore contravened Article 1 of Protocol No. 1 to the Convention (see, *mutatis mutandis*, *Frizen v. Russia*, no. 58254/00, § 35, 24 March 2005; *Adzhigovich*, cited above, § 34; and *Cazacu*, cited above, §§ 46-47), because the manner in which that court interpreted and applied the relevant domestic law, in particular section 387 of the Obligations Act, was not foreseeable for the applicant, who could reasonably have expected that his commanding officer's statements to the effect that his claims were not in dispute and that payment was to follow once funds had been allocated, constituted acknowledgement of the debt capable of interrupting the running of the statutory limitation period (see, for example and *mutatis mutandis*, *Nacaryan and Deryan*, cited above, §§ 51-60, and *Fokas v. Turkey*, no. 31206/02, §§ 42-44, 29 September 2009). Accordingly, the applicant could

reasonably have expected that the statutory limitation period had not expired. This finding that the interference was not in accordance with the law makes it unnecessary to examine whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

79. There has therefore been a violation of Article 1 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

80. The applicant also complained that the aforementioned civil proceedings had been unfair, alleging that the domestic courts had erred in the application of the relevant provisions of substantive law and that the judgment of the second-instance court had not been duly reasoned. He relied on Article 6 § 1 of the Convention, the relevant part of which reads:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ..."

81. The Court notes that the applicant complained about the outcome of the proceedings, which, unless it was arbitrary, the Court is unable to examine under Article 6 § 1 of the Convention. The applicant did not complain, and there is no evidence to suggest, that the domestic courts lacked impartiality or that the proceedings were otherwise unfair. In the light of all the material in its possession, the Court considers that in the present case the applicant was able to submit his arguments before courts which offered the guarantees set forth in Article 6 § 1 of the Convention and which addressed those arguments in decisions that were duly reasoned and not arbitrary.

82. It follows that this complaint is inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. 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

84. The applicant claimed 2,250 euros (EUR) in respect of pecuniary and non-pecuniary damage.

85. The Government contested this claim.

86. 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). In this connection the Court notes that under section 428a of the Civil Procedure Act (see paragraph 35 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 the nature of the applicant's complaint under Article 1 of Protocol No. 1 to the Convention and the reasons for which it has found a violation of that Article, 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 *Trgo*, cited above, § 75).

87. On the other hand, the Court finds that the applicant must have sustained non-pecuniary damage. It therefore awards the applicant under that head EUR 2,250, that is, the amount sought by the applicant, plus any tax that may be chargeable on that amount.

B. Costs and expenses

88. The applicant further claimed EUR 3,500 for costs and expenses incurred before the domestic courts. He also claimed costs and expenses incurred before the Court but in doing so he only specified the amount of postal expenses and sought HRK 100 on that account.

89. The Government contested these claims.

90. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum.

91. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 833 for costs and expenses in the domestic proceedings, plus any tax that may be chargeable to the applicant on that amount.

92. As regards the applicant's claim for costs and expenses incurred before it, the Court notes that pursuant to Rule 60 § 1 of the Rules of Court an applicant who wishes to obtain an award of just satisfaction under Article 41 of the Convention in the event of the Court finding a violation of his or her Convention rights must make a specific claim to that effect. Since in the present case, apart from postal expenses, the applicant did not make a specific claim for costs and expenses before the Court, he failed to comply

with the above requirement set out in Rule 60 § 1 of the Rules of Court. The Court therefore makes no award in respect of that part of his claim (Rule 60 § 3). On the other hand, it awards the applicant EUR 14 for postal expenses, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

93. The Court considers it appropriate that the default interest 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 complaint concerning the right to peaceful enjoyment of possessions admissible and the remainder of the application inadmissible;

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 according to 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 2,250 (two thousand two hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 847 (eight hundred and forty-seven 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 20 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Malinverni is annexed to this judgment.

C.L.R.
S.N.

CONCURRING OPINION OF JUDGE MALINVERNI

In paragraph 86, 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)."

In this connection the Court notes that "... under section 428a of the Civil Procedure Act ... 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 the nature of the applicant's complaint under Article 1 of Protocol No. 1 to the Convention and the reasons for which it has found a violation of that Article, 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."

For reasons I have explained on many occasions, either alone or together with other judges, in particular Judge Spielmann,[1] I would very much have liked this principle, on account of its importance, to have been reflected in the operative part of the judgment.

That requirement appears to me to be all the more necessary in the present case in view of the Court's finding that "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 ..."

[1] See my joint concurring opinions with Judge Spielmann appended to the following judgments: *Vladimir Romanov v. Russia* (no. 41461/02, 24 July 2008); *Ilatovskiy v. Russia* (no. 6945/04, 9 July 2009); *Fakiridou and Schina v. Greece* (no. 6789/06, 14 November 2008); *Lesjak v. Croatia* (no. 25904/06, 18 February 2010); and *Prežec v. Croatia* (no. 48185/07, 15 October 2009). See also my concurring opinion joined by Judges Casadevall, Cabral Barreto, Zagrebelsky and Popović in the case of *Cudak v. Lithuania* ([GC], no. 15869/02, 23 March 2010), as well as the concurring opinon of Judges Rozakis, Spielmann, Ziemele and Lazarova Trajkovska in *Salduz v. Turkey* ([GC], no. 36391/02, ECHR 2008-...). See also my concurring opinion in *Pavlenko v. Russia* (no. 42371/02, 1 April 2010).