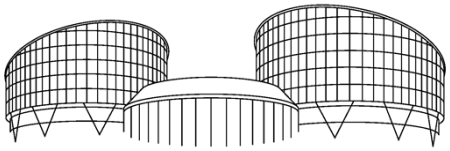

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF HAMZAGIĆ v. CROATIA

(Application no. 68437/13)

JUDGMENT

Art 6 § 1 (civil) • Fair hearing • Domestic court's reliance on competent administrative authority's in-house experts' reports, without additional verification of applicant's condition by psychiatry specialist as per his request, with no consequences on fairness of proceedings dismissing his disability pension claim

STRASBOURG

9 December 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Hamzagić v. Croatia,

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

Péter Paczolay, *President,*
Ksenija Turković,
Alena Poláčková,
Erik Wennerström,
Raffaele Sabato,
Lorraine Schembri Orland,
Ioannis Ktistakis, *judges,*
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application 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 national of Bosnia and Herzegovina, Mr Meho Hamzagić ("the applicant"), on 23 October 2013;

the decision to give notice of the application to the Croatian Government ("the Government");

the parties' observations;

Having deliberated in private on 9 November 2021,

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

INTRODUCTION

1. The present case concerns the applicant's complaint under Article 6 § 1 of the Convention that in the administrative proceedings his entitlement to a disability pension was decided on the basis of the findings of the experts who lacked the relevant competence and neutrality to assess his condition.

THE FACTS

2. The applicant was born in 1951 and lives in Marburg, Germany. 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. BACKGROUND TO THE CASE

5. During the war in Bosnia and Herzegovina the applicant spent three months in a prison camp, where he was exposed to various kinds of traumatic events. In connection with this, he was diagnosed with post-traumatic stress disorder (PTSD) in Germany.

6. On 12 August 2010 the applicant applied to the German authorities for a disability pension on account of his health issues. The German authorities granted him the pension primarily on the basis of his PTSD.

7. On 20 January 2011 the German authorities forwarded his application to the Croatian Pension Insurance Fund (*Hrvatski zavod za mirovinsko osiguranje* – hereinafter "the Fund"), pursuant to an international agreement with Croatia on social insurance matters. They enclosed his medical documentation with that application.

II. ADMINISTRATIVE PROCEEDINGS IN CROATIA

8. On 28 March 2012 a specialist in anaesthesiology working for the Fund examined the applicant's medical documentation forwarded by the German authorities. She noted that the applicant had been diagnosed with PTSD, chronic pancreatitis and partial hearing loss in both ears, but that his condition did not amount to a disability under the criteria applicable in Croatia (see paragraph 21 below).

9. On 19 April 2012 the Zagreb Office of the Fund (*Hrvatski zavod za mirovinsko osiguranje, Područna služba u Zagrebu*) dismissed the applicant's claim for a partial disability pension, referring to the expert report of 28 March 2012.

10. The applicant appealed, contesting the expert's findings and arguing that he had been recognised as having a disability in Germany.

11. On 4 June 2012 the Central Office of the Fund (*Hrvatski zavod za mirovinsko osiguranje, Središnja služba*) obtained the opinion of an in-house appeals expert G.M., a doctor of medicine. G.M. examined the applicant's medical documentation and reported that his condition did not amount to a disability under the applicable domestic criteria.

12. On 2 July 2012 the Central Office of the Fund, referring to the findings of the expert reports, dismissed the applicant's appeal.

13. The applicant lodged an administrative action with the Zagreb Administrative Court (*Upravni sud u Zagrebu*). He contested the experts' findings and argued that they should have examined him in person. He referred to the opinion of a neuropsychiatrist who had reported on his illness. He argued that a human body was the same in every country and that therefore the criteria for establishing a disability could not have differed to such an extent so that a person was recognized as being totally disabled in one country, and not disabled in another.

14. On 17 December 2012 the applicant submitted to the Zagreb Administrative Court the medical documents obtained in Germany translated into Croatian, contending that in Germany he was regarded as having total incapacity for work primarily on the basis of his PTSD. His PTSD had been caused by being held for three months in a concentration camp in Bosnia and Herzegovina, where he had been physically and

psychologically ill-treated and had witnessed many people being killed. Many Croatian soldiers and civilians who had been held in Serbian concentration camps had been granted a disability pension. His medical documents had shown that, in addition to PTSD, he suffered from other issues as well, such as pancreatitis, diabetes, hearing loss and osteopenia. He requested that, having regard to his particular medical condition, a psychiatric report be obtained.

15. At a hearing held on 18 December 2012 the applicant reiterated his request for a psychiatric report. The Fund proposed that its appeals expert, G.M., be heard at the hearing. The Zagreb Administrative Court accepted that proposal, invited expert G.M. to give evidence at the hearing and forwarded to him the medical documents submitted by the applicant on 17 December 2012 (see paragraph 14 above).

16. On 23 January 2013 the appeals expert, G.M., examined the above-mentioned documents and reported that the applicant's PTSD, or other illnesses, did not amount to a disability. The relevant part of the report reads as follows:

> "[The applicant] completed elementary education and in Croatia he worked as a street cleaner. His principal illness is a psychotic neurotic disorder ... PTSD.
>
> The newly submitted ... medical documentation contains neuropsychiatric reports and a letter following psychiatric treatment in hospital .... It appears from the psychiatrist's report that [the applicant] is not intellectually intrusive and does not suffer from psycho-organic changes or psychotic disorders [.] Mood swings are presumed to be ... the mildest form of depressive neurosis, anxiety, occasional insomnia and remembering war events. There are also ... headaches and stomach aches. ....
>
> It appears from the psychiatrist's report that there are no functional psychic deficiencies with the [applicant] ... that could affect [his] working ability, [that] the existent neurotic disorders can be treated and [that], in any event, the [applicant] has worked for years with [this medical condition].
>
> As to his pancreas ... there are no post-operative complications [.] The mild disorder regarding his insulin ... did not cause complications in his organs ... there are also no functional deficits in his digestion. The occasional post-operative pain in that area can be treated.
>
> Loss of hearing is compensated by a hearing device which enables social contact, thus there is no functional deficit in that regard either.
>
> Osteopenia ... has no impact on his locomotory abilities ... and is not even being treated.
>
> Having regard to the above considerations, the appeals expert maintains his earlier conclusion."

17. At a hearing held on 26 February 2013 before the Zagreb Administrative Court G.M. stated that PTSD, in the applicant's particular case, and in general in most cases, did not lead to a disability, and that the applicant's other illnesses did not amount to a disability. As G.M. was not a

specialist in psychiatry, the applicant requested that a psychiatric report be obtained. The Zagreb Administrative Court dismissed that request and closed the hearing.

The relevant part of the hearing transcript reads:

> "[G.M.] states that the German social insurance authority established that the [applicant] suffered from a disability on the basis of a diagnosis of PTSD, [an illness] which [G.M.] does not believe can cause disability [.] He states that the only serious illness in the [applicant's] case is pancreatitis, but that that illness has been cured by surgery, without complications [.] He reiterates that a neurotic disorder should not be the subject of an expert report. Diabetes ... is of a milder form and does not affect the eyesight, nerves or ... blood vessels. Osteopenia is a bone condition which does not cause any permanent changes either. All those illnesses taken separately, and together, do not cause either professional or general incapacity for work.
>
> When asked by the [applicant], the expert states that PTSD, in this particular case, and in general in most cases, does not lead to disability. He states that he is not a specialist in psychiatry.
>
> The expert report was issued on the basis of all the medical documentation without examining the applicant in person.
>
> There are no further questions.
>
> The [applicant's] lawyer proposes that a psychiatric expert report be obtained.
>
> The parties have no further evidence proposals.
>
> The court renders a decision, no further evidence shall be obtained."

18. On 5 March 2013 the Zagreb Administrative Court dismissed the applicant's administrative action as unfounded. It held that the relevant medical facts of the case had been established by the two expert reports obtained in the case, which were consonant with the medical documentation in the file, and that the applicant's arguments could not have led to a different outcome. It found that, under the relevant law, expert reports were obtained on the basis of medical documents forwarded by the foreign social security authorities, and that examinations in person were only conducted where necessary. Each country established disability on the basis of its own legal and medical criteria, and that in the present case the experts who had examined the applicant's medical documentation had concluded that his illnesses did not amount to a disability under the applicable Croatian criteria. The medical specialisation of G.M. was irrelevant to the applicant's case, since the Fund's experts assessed a person's ability to work on the basis of medical documentation issued by a specialist for a particular illness.

The Zagreb Administrative Court further explained that it had dismissed the applicant's request to obtain an expert report from a permanent court expert in psychiatry because the relevant facts of the case had been correctly and sufficiently established by the Fund's experts. Further to this, under section 113 of the Pension Insurance Act (see paragraph 21 below) the Administrative Court was allowed to grant a disability pension only on the basis of the Fund's in-house experts' report establishing a disability.

19. The applicant lodged a constitutional complaint, contending that the Fund's appeals expert, not being a specialist in psychiatry, had lacked the relevant competence and neutrality to assess his condition. According to that expert, PTSD could not cause disability, whereas in 2007 13,278 disabilities in Croatia had been diagnosed on the basis of PTSD (see paragraph 28 below).

20. On 18 September 2013 the Constitutional Court dismissed the applicant's constitutional complaint as manifestly ill-founded. That decision was served on the applicant's representative on 2 October 2013.

RELEVANT LEGAL FRAMEWORK

21. The relevant provisions of the Pension Insurance Act (*Zakon o mirovinskom osiguranju*, Official Gazette no. 102/98, with subsequent amendments), which was in force between 1 January 1999 and 31 December 2013, read as follows:

Section 34

"(1) Disability exists where, owing to changes in health that cannot be treated, an insured person's ability to work is permanently reduced by more than half in comparison to a physically and mentally healthy insured person of the same or similar education and capability (professional incapacity for work) ...

(2) Disability also exists where an insured person, owing to changes in health that cannot be treated, permanently loses the ability to work (general incapacity for work).

(3) Disability within the meaning of [subsections] 1 and 2 can be caused by illness, an injury sustained outside of work, an injury [sustained] at work or an occupational illness.

(4) When an insured person is established with professional incapacity for work as stipulated in [subsection 1], [it is necessary] to establish the remaining ability to work if, having regard to the insured person's health, age, education and competence, he or she could [undergo] vocational rehabilitation to work full time in another job."

Section 113(1)

"When a disability ... has to be determined for the purposes of deciding pension insurance rights, the competent unit of the Fund deciding the rights shall establish the facts on the basis of reports prepared by authorised experts."

Section 114

"The Government of the Republic of Croatia shall regulate the procedure for conducting [expert reports] relevant for granting the rights under this Act, and in particular ...which persons may be authorised as experts ... the appointment procedure, scope and manner of work, content of expert reports ..."

Section 120(3)

"Where an appeal challenges the report of an authorised expert at first instance, prior to deciding the appeal, the Central Office of the Fund shall obtain a report of an authorised expert at second-instance."

22. The relevant provisions of the Croatian Register of Persons with Disabilities Act (*Zakon o Hrvatskom registru o osobama s invaliditetom*, Official Gazette no. 64/2001) read:

Section 2(2)

"Disability is a permanent limitation, reduction or loss (resulting from a health impairment) of the ability to perform a physical activity or mental function appropriate to a person's age and relates to abilities, in the form of complex activities and behaviours, which are generally accepted as essential elements of everyday life."

23. The relevant provisions of the Administrative Disputes Act (*Zakon o upravnim sporovima*, Official Gazette nos. 20/2010 and 143/2012), as in force at the time, read:

Section 33

"(1) The [Administrative Court] freely assesses the evidence and establishes facts.

(2) The court takes into account the facts established during the proceedings [that led to the] adoption of the impugned decision, by which it is not bound, as well as facts that it established on its own.

(3) The parties may propose which facts are to be established and evidence by which they can be established, but the court is not bound by such proposals.

(4) Evidence includes documents, the hearing of the parties, witness testimonies, expert reports, on-site investigations and other means.

(5) The court adduces evidence in accordance with the rules governing the adducing of evidence in civil proceedings."

The remaining provisions of the Administrative Disputes Act are set out in the case of *Krunoslava Zovko v. Croatia* (no. 56935/13, § 24, 23 May 2017).

24. The Decree on medical expert assessments in pension insurance (*Uredba o medicinskom vještačenju u mirovinskom osiguranju*, Official Gazette no. 73/2009 – hereinafter "the Decree"), in force at the material time, provided that, for the purposes of granting pension insurance rights, disability was established on the basis of authorised expert reports (section 2(1)). Reports in first-instance proceedings were issued by experts, and those in second-instance proceedings by senior experts (*viši vještaci*) (section 2(3)). In their work, experts and senior experts were required to apply the Pension Insurance Act, the Decree and other regulations, as well as the principles of and developments in contemporary medical science (section 2(4)).

25. Experts and senior experts were appointed by the Fund's Administrative Council following an open competition (section 3(1)). They had to be doctors of medicine specialising in areas such as occupational medicine, general medicine, psychiatry, neurology, orthopaedics and rheumatology, with at least five years' relevant professional experience (section 3(3)). In addition, experts and senior experts who conducted medical expert assessments on the basis of medical documentation forwarded by the foreign pension insurance authorities, pursuant to an international agreement on social insurance, had to have knowledge of a foreign language (section 3(4)).

26. If a person subject to a medical expert assessment lived abroad, authorised experts issued their reports on the basis of medical documentation forwarded by the foreign pension insurance authorities, pursuant to an international agreement on social insurance. Where necessary, the experts issued their reports on the basis of an examination in person of the insured individual (section 6(3)).

27. If the insured person lodged an appeal against the first-instance decision of the Fund, and in so doing challenged the findings of the expert regarding disability, the Central Office of the Fund would ask a senior expert to conduct a medical expert assessment regarding the matter (section 27).

28. The Report on Persons with Disabilities in the Republic of Croatia (*Izvješće o osobama s invaliditetom u Republici Hrvatskoj*), issued in October 2007 by the Croatian Institute for Public Health (*Hrvatski zavod za javno zdravstvo*), contained the following information:

In 2007 there were 97,639 people in Croatia suffering from a mental illness. 13,278 of them suffered from PTSD (tables nos. 5 and 9).

In the register of the Croatian Pension Insurance Fund, which paid different kinds of disability-related benefits, including disability pensions, there were 325,770 people suffering from a disability (table no. 17). Mental illnesses (depression, reaction to severe stress, schizophrenia and mental illnesses caused by alcohol consumption) were among the most common diagnoses (table no. 20).

For war veterans, to whom special criteria applied for establishing disability, PTSD was the most common cause of disability (table no. 25).

29. The Government submitted statistics published by the Croatian Pension Insurance Fund, according to which 10,987 persons were granted a disability pension in 2007. There is no information regarding the illnesses on the basis of which those people were granted a disability pension.

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

30. The applicant complained that the administrative proceedings had been unfair in that he had been unable to obtain a psychiatric report related to his disability and had therefore been denied the relevant pension entitlements. He relied on Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

1. The parties' arguments

31. The Government submitted that the applicant had not exhausted domestic remedies in that he had not properly argued his case before the Zagreb Administrative Court. He had not complained before that court that the experts employed by the Fund, and in particular the appeals expert, had lacked the competence or impartiality to assess his condition. He had requested a psychiatric report on the matter, without submitting any explanation for that request.

32. The applicant maintained that he had properly argued his case before the domestic authorities.

2. The Court's assessment

33. The Court notes that in the administrative action lodged with the Zagreb Administrative Court the applicant contested the findings of the Fund's experts, argued that they should have examined him in person, and referred to the opinion of a neuropsychiatrist who had reported on his illness (see paragraph 13 above). At the hearing held on 26 February 2013, after the Fund's appeals expert stated that PTSD could not cause disability and that he was not a specialist in psychiatry, the applicant reiterated his request that a psychiatric report be obtained (see paragraph 17 above). In his constitutional complaint, he contended that the appeals expert, not being a specialist in psychiatry, had lacked the relevant competence and neutrality to assess his condition (see paragraph 19 above).

34. The Court considers that the applicant, having put the issue before both the Zagreb Administrative Court and the Constitutional Court, did raise before the domestic courts the complaints which he has submitted to the Court (contrast *Mađer v. Croatia*, no. 56185/07, §§ 137-39, 21 June 2011, and *Merot d.o.o. and Storitve Tir d.o.o. v. Croatia* (dec.), nos. 29426/08 and 29737/08, §§ 35-36, 10 December 2013), and 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, for instance, *Arps v. Croatia*, no. 23444/12, § 20, 25 October 2016). It therefore follows that the Government's objection must be dismissed.

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

B. Merits

1. The parties' arguments

(a) The applicant

36. The applicant asserted that the Zagreb Administrative Court had decided his case based solely on the expert reports obtained by his opponent in the proceedings and had refused to obtain an independent psychiatric report on the matter. That report would have been of particular importance in circumstances in which the experts employed by the Fund had reached a different conclusion from the German authorities regarding his disability, and in which the appeals expert, who was not a specialist in psychiatry and who had explicitly stated that PTSD could not cause disability, had lacked the required competence and neutrality to assess his condition.

(b) The Government

37. The Government contended that the Zagreb Administrative Court had carefully analysed the competence of the Fund's experts and had explained why they had all the necessary competence to assess the applicant's medical condition. Their task was to examine the effect of the diagnosed illnesses to the applicants' ability to work, having regard to all the medical documentation prepared by the various specialists.

38. The Fund's appeals expert had not shown any prejudice against persons suffering from PTSD. The expert had not said that PTSD could never cause disability; rather, he had said that PTSD, in most cases, had not affected a person's ability to work to such an extent that it would amount to professional or general incapacity for work, as required by the Pension Insurance Act for granting a disability pension.

39. The Government lastly asserted that the applicant had misinterpreted the statistics he had relied on in his constitutional complaint to challenge the report of the Fund's appeals expert. The statistics of the Croatian Institute for Public Health he had mentioned concerned a disability within the meaning of the Croatian Register of Persons with Disabilities Act (see

paragraph 22 above), which qualitatively and quantitatively differed from the notion of disability under the Pension Insurance Act (see paragraph 21 above). Hence, that report could not call into question the competence of the Fund's appeals expert, who had examined whether the applicant's condition had led to a disability within the meaning of the Pension Insurance Act.

2. The Court's assessment

(a) General principles

40. The Court reiterates that it is for the national courts to assess the evidence they have obtained and the relevance of any evidence that a party wishes to have produced. Nevertheless, the Court has to ascertain whether the proceedings considered as a whole were fair, as required by Article 6 § 1 (see *Mantovanelli v. France*, 18 March 1997, § 34, *Reports of Judgments and Decisions* 1997-II, and *Elsholz v. Germany* [GC], no. 25735/94, § 66, ECHR 2000-VIII).

41. In this connection, the Court reiterates that where a party asks the court to have a certain issue re-examined by an expert, or where it tries to introduce a second opinion on certain matters, it remains primarily for the national court to judge whether it would serve any useful purpose (see *H. v. France*, 24 October 1989, §§ 60-61, Series A no. 162-A). However, in exceptional circumstances the need to obtain an alternative expert opinion on an important aspect of the case may be self-evident and the failure of the court to obtain expert evidence sought by a party may make the proceedings unfair (see, for example, *G.B. v. France*, no. 44069/98, §§ 68-70, ECHR 2001-X; *Van Kück v. Germany*, no. 35968/97, § 55, ECHR 2003-VII; and *Stoimenov v. the former Yugoslav Republic of Macedonia*, no. 17995/02, §§ 38-43, 5 April 2007).

42. The Court further reiterates that Article 6 § 1 of the Convention guarantees a right to a fair hearing by an independent and impartial "tribunal" and does not expressly require that an expert heard by that tribunal fulfils the same requirements (see *Sara Lind Eggertsdóttir v. Iceland*, no. 31930/04, § 47, 5 July 2007, and *Letinčić v. Croatia*, no. 7183/11, § 51, 3 May 2016). However, the opinion of an expert who has been appointed by the competent court to address issues arising in the case is likely to carry significant weight in that court's assessment of those issues. In its case-law, the Court has recognised that the lack of neutrality on the part of a court-appointed expert may in certain circumstances give rise to a breach of the principle of equality of arms inherent in the concept of a fair trial (see *Bönisch v. Austria*, 6 May 1985, §§ 30-35, Series A no. 92, and *Brandstetter v. Austria*, 28 August 1991, § 33, Series A no. 211).

43. The Court further notes that the position occupied by the experts throughout the proceedings, the manner in which they perform their functions, and the way the judges assess their opinions are relevant factors

to be taken into account in assessing whether the principle of equality of arms has been complied with (see *Devinar v. Slovenia*, no. 28621/15, § 47, 22 May 2018). In this connection, the Court has found that the Convention does not bar the national courts from relying on expert opinions drawn up by specialised bodies to resolve the disputes before them when this is required by the nature of the contentious issues under consideration. What it does require, however, is that the requirement of neutrality on the part of an appointed expert be observed, that the court proceedings comply with the adversarial principle and that the applicant be placed on a par with his or her adversary, namely the State, in accordance with the principle of equality of arms (see *Letinčić*, cited above, § 61).

44. In particular, the Court has previously found that while the fact that an expert charged with giving an opinion on a matter in dispute is employed by the same administrative authority as that involved in the case might give rise to a certain apprehension on the part of the applicant, what is decisive is whether the doubts raised by appearances can be held to be objectively justified (see *Sara Lind Eggertsdóttir*, § 48; *Brandstetter*, § 44; and *Devinar,* § 48, all cited above).

(b) Application of these principles to the present case

45. The Court observes at the outset that the expert reports prepared by the administrative authority's in-house experts had a decisive role in the assessment of the merits of the applicant's claim (see paragraphs 8-18 above and compare *Krunoslava Zovko v. Croatia*, no. 56935/13, § 43, 23 May 2017).

46. The Court reiterates that, whereas the fact that an expert is employed by the same administrative authority that is a party to the case might give rise to doubts on the part of the applicant as the opposing party, such doubts cannot be considered decisive if there was no objective reason to fear that the expert lacked neutrality in his or her professional judgment (see paragraph 44 above).

47. In the present case, as to the expert who submitted the report in the first-instance proceedings before the Fund, the Court observes that neither the contents of the case file nor the applicant's submissions disclose any evidence that she lacked the requisite objectivity (compare *Devinar*, § 51, and *Krunoslava Zovko*, § 45, both cited above).

48. As regards G.M., the appeals expert who prepared the report in the second-instance proceedings before the Fund, the Court finds it understandable that doubts could have arisen in the mind of the applicant as to his competence and neutrality, having regard that the applicant was granted a disability pension in Germany primarily on the basis of his PTSD, whereas G.M. was not a specialist in psychiatry. Also, at the hearing he stated that PTSD could not cause disability (see paragraph 17 above).

49. In this regard, the Court firstly observes that each country has its own criteria for awarding a disability pension. Under the Croatian Pension Insurance Act, in order to qualify for a disability pension, a person's ability to work had to be reduced entirely (general incapacity for work) or by more than half in comparison to a physically and mentally healthy insured person of the same or similar education and capability (professional incapacity for work), owing to changes in health that could not be treated (see paragraph 21 above). Hence, the bar for being recognised as having a disability for the purposes of being granted a disability pension under the Croatian Pension Insurance Act was set quite high, in the sense of the effect which the health issues had to have had on the person's ability to work.

50. It follows, as explained by the domestic authorities, that the fact that the applicant was awarded a disability pension in Germany primarily on the basis of his PTSD, was of no relevance in the proceedings before the Croatian authorities, since the latter were tasked with examining whether the applicant's medical issues warranted granting him a disability pension under the criteria applicable in Croatia.

51. The Fund's experts concluded that the applicant's illnesses diagnosed by specialists in Germany, taken separately and together, did not affect his ability to work to such an extent that it would amount to general or professional incapacity for work, as required by the Croatian law for granting a disability pension (see paragraphs 16-17 above). As to the applicant's PTSD diagnosis in particular, the appeals expert noted that according to the German psychiatrist's report the applicant had no functional psychic deficiencies that may have affected his working ability, that the existent neurotic disorders could have been treated and that, in any event, the applicant had worked for years with his medical condition (ibid.).

52. The Court observes that the appeals expert did not rule out the possibility that PTSD causes disability in some cases. Rather, he implied that, in his experience, PTSD in most cases did not affect a person's ability to work to such an extent that it reduced it entirely or by more than half in comparison to a physically and mentally healthy insured person of the same or similar education and capability, as required by the Croatian Pension Insurance Act for granting a disability pension. His examination had thus been limited to disability as defined by the domestic law. In these circumstances, the applicant's doubts as to the neutrality of the expert in question in his professional judgment, although understandable, could not be considered justified.

53. The Court observes that the statistics the applicant relied on to challenge the appeals expert's findings concerned disability within the meaning of the Croatian Register of Persons with Disabilities Act (see paragraph 22 above), which qualitatively and quantitatively differed from the notion of disability under the Pension Insurance Act (see paragraph 21 above). Hence, that report could not call into question the competence of the

Fund's appeals expert, who examined whether the applicant's condition had led to disability within the meaning of the Pension Insurance Act.

54. The Court further does not find it problematic that the experts who submitted an opinion in his case were not specialists in psychiatry, or in any of the other particular illnesses suffered by the applicant. Their task was not to diagnose and treat the applicant's illnesses, but to assess, on the basis of the medical documentation prepared by the medical specialists in Germany who diagnosed and treated them, their effect on his ability to work. The Court notes that those appointed as the Fund's experts were medical experts with considerable professional and educational experience and that, in their work, they were required to apply the Pension Insurance Act, the Decree and other regulations, as well as the principles of and developments in contemporary medical science (see paragraphs 24 and 25 above).

55. The Court further notes that the applicant had the opportunity to effectively challenge the expert reports and the relevant decisions of the Fund before the Zagreb Administrative Court. After he lodged an administrative action, the Zagreb Administrative Court forwarded his additional medical documentation to the appeals expert and heard that expert at a hearing during which the applicant was able to ask questions (see paragraphs 13-17 above). Ultimately, it dismissed the applicant's action, finding that the arguments put forward by the applicant did not contain any statements calling into question the experts' findings (see paragraph 18 above).

56. The Court notes that the applicant's proposal to obtain a psychiatric report was based on the argument that he had been regarded as having total incapacity for work on the basis of his PTSD in Germany, and that the expert reports in Croatia had been issued without the experts examining him in person (see paragraph 14 above). Hence, his submissions were primarily directed against the criteria which the Fund's experts had applied to assess his medical condition (see paragraph 21 above), which, in itself, did not warrant obtaining another expert report. Furthermore, under the national law examinations in person were only conducted exceptionally, if a conclusion could not be reached on the basis of the medical documentation forwarded by the foreign pension insurance authority, which apparently was not the case in the applicant's situation (see paragraph 28 above).

57. The Court reiterates that it is primarily for the national courts to assess the evidence they obtain and the relevance of any evidence that a party wishes to have produced (see *Elsholz*, § 66, and *Mantovanelli*, § 34, both cited above). The Court does not find anything unfair in the reasoned decision of the Zagreb Administrative Court refusing to obtain a psychiatric report. That court found that the relevant medical facts of the case had been established by the two expert reports obtained in the case which were consonant with the medical documentation in the file, that each country examined disability for the purposes of awarding a disability pension on the

basis of its own medical and legal criteria and that in the case at hand the experts had concluded that the applicant's illnesses did not amount to a disability under the Croatian criteria (see paragraph 18 above).

58. In the light of the foregoing considerations, the Court finds that the fact that the Zagreb Administrative Court decided the applicant's case based on the Fund's expert reports, without additional verification of his condition by a specialist in psychiatry as requested by him, did not constitute a violation of his right to a fair trial.

59. Accordingly, the Court finds that there has been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT,

1. *Declares*, unanimously, the application admissible;

2. *Holds*, by five votes to two, that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 9 December 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Liv Tigerstedt	Péter Paczolay
Deputy Registrar	President

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

P.P.C.
L.T.

JOINT DISSENTING OPINION OF JUDGES TURKOVIĆ AND SCHEMBRI ORLAND

1. The applicant in this case complained that the administrative proceedings denying him a disability pension had been unfair. The central tenet of the applicant's complaints concerns the alleged lack of competence and neutrality on the part of the experts who produced the reports on his disability and the related breach of the principle of equality of arms under Article 6 § 1 of the Convention. It is undeniable that these expert reports played a decisive role in the assessment of the merits of the applicant's claim (see paragraph 44 of the judgment).

2. We respectfully disagree with the finding of a non-violation of Article 6 § 1. The applicant in this case had suffered the trauma of three months in a concentration camp during the war in Bosnia and Herzegovina (see paragraph 5 of the present judgment). As a result, he was diagnosed in Germany with post-traumatic stress disorder (PTSD) resulting in a total incapacity for work and was, on that basis, granted a disability pension. The medical documents were duly transmitted to Croatia and submitted to the administrative authorities pursuant to an international agreement with Croatia on social insurance matters (see paragraph 7), in order that Croatia could examine the possibility of granting him, on a proportional basis, part of the disability pension.

3. We recognise that the domestic system provides for a list of in-house experts working for the Pension Insurance Fund (Fund), an administrative authority examining entitlement to the disability pension. Those experts must be medical doctors specialising in areas such as occupational or general medicine, psychiatry, neurology, orthopaedics and rheumatology, with at least five years' relevant professional experience; from this list, the Fund can draw and appoint experts for a particular case (see paragraphs 25 and 45 of the judgment). The applicant does not challenge the viability of this system, provided safeguards are in place to ensure the competence and neutrality of the experts. The basis of his complaint is rather two-fold, resting on: (i) the lack of relevant competence of the experts appointed in this case; and (ii) their (lack of) neutrality. In these circumstances, the Court examined whether the procedural shortcomings complained of rendered the impugned proceedings taken as a whole unfair (see *Letinčić v. Croatia*, no. 7183/11, § 55, 13 May 2016.).

4. In the present case we cannot agree with the conclusion that the Administrative Court's decision to base its findings on the reports by the Fund's expert, without additional assessment of the applicant's medical documentation and ability to work by a psychiatric specialist, as requested by him, did not constitute a violation of his right to fair trial. While we agree with the majority that there are no objective reasons in the present case to fear that the expert lacked neutrality in his or her professional

judgment (see paragraph 45 of the judgment) we regret that the majority failed to opine in more depth on the expert's lack of specific knowledge in the complex field of psychiatry.

5. The German authorities found that the applicant had total incapacity for work, primarily on the basis of his PTSD (see paragraph 6 of the judgment). PTSD was also the main ground on which he sought a disability pension in Croatia. In the proceedings before the Croatian authorities, the Fund's experts concluded that the applicant's illnesses as diagnosed by specialists in Germany, taken separately and together, did not affect his ability to work to such an extent that it amounted to general or professional incapacity for work, as required by the Croatian Pension Insurance Act in order to grant a disability pension. They provided no explanation on how and to what extent the criteria between Germany and Croatia differ, or on how they arrived at a diametrically opposed conclusion as to the effects and consequences of his illness from that of the German authorities.

6. It is noted that the appeals expert expressly stated that he believed that PTSD, both in this particular case and in general in most cases, could not lead to disability, and that a neurotic disorder should not be the subject of an expert report. However, he confirmed that he is not an expert in psychiatry (see paragraph 17 of the judgment). We have no information as to whether or how many of the 10,987 individuals granted a disability pension by the Croatian Pension Insurance Fund in 2007 were granted it on the basis of PTSD. However, given that in 2007 mental illnesses such as depression and reaction to severe stress were among the most common diagnoses for the 325,770 people registered by the Croatian Pension Insurance Fund as suffering from a disability, and that the Fund introduced special criteria for establishing disability for war veterans, among whom the most common cause of disability was PTSD (see paragraph 28), we consider it significant that the applicant, albeit not a war veteran, was suffering from PTSD because of the various traumatic events to which he had been exposed in a prison camp during the war in Bosnia and Herzegovina and that, in spite of this fact, he was denied the possibility of being assessed by an expert in psychiatry and, more specifically, PTSD. In these circumstances, we find, unlike the majority, that the applicant's doubts concerning the lack of appropriate expertise of the Fund's experts and the quality of their professional judgment appear to have been justified (see paragraph 52).

7. It is true that, as explained by the domestic authorities, each country has its own criteria for awarding a disability pension. However, what is at stake in the instant case is not whether the applicant's medical condition truly amounted to a disability within the meaning of the Croatian Pension Insurance Act, but rather whether the Fund's experts could be considered as having the necessary competence and neutrality to give an opinion on the matter. In this regard, the domestic courts should have been mindful of the fact that neither of the two experts whose opinion was decisive for the

applicant's case was a specialist in psychiatry. Unlike the majority, we find it evident that a proper assessment of the effect of the applicant's PTSD on his ability to work necessarily required special medical knowledge and expertise in the complex field of psychiatry, together with a complex assessment of the psychological consequences arising from his exposure to various traumatic events in the prison camp (see, *mutatis mutandis*, *Van Kück v. Germany*, no. 35968/97, § 55, ECHR 2003-VII), which fell outside these particular experts' areas of expertise, namely anaesthesiology and general medicine. The Croatian experts, who lacked any psychiatric expertise, concluded that the applicant had no functional psychic deficiencies and that his neurotic disorder could have been treated (see paragraph 51 of the judgment). In this situation, the Croatian courts should have sought further expertise from an appropriate medical specialist (see *Van Kück*, cited above.). We note that on the Fund's list of experts there were those who were specialised in psychiatry (see paragraph 3 above), and which could have been appointed in the applicant's case.

8. We further note that under the Administrative Disputes Act, the Administrative Court – as a judicial body with full jurisdiction to examine all factual and legal questions arising in the context of the case – was not bound by the facts established by the Fund, and was entitled to adduce evidence, for example by hearing the parties and taking witness statements, obtaining expert reports and conducting on-site investigations (see paragraph 23 of the judgment). However, when dismissing the applicant's request for an expert report from an independent psychiatric expert, the Administrative Court held, *inter alia*, that it was permitted to grant a disability pension only on the basis of reports by the Fund's in-house experts establishing a disability (see paragraph 18). By dismissing on these grounds the applicant's request for the appointment of an independent expert specialised in psychiatry, the Administrative Court denied him any real opportunity to comment effectively on and to challenge the findings of the Fund (see *Mantovanelli v. France*, no. 21497/93, § 36, Reports 1997-II). This left the Fund's opinions as the decisive evidence relied on by the courts to determine the issue in a case which certainly required expert knowledge, arguably not at hand in the court itself. Such reasoning by the domestic courts further highlights the dominant role played by the Fund (see *Korošec v. Slovenia*, no. 77212/12, § 56, 8 October 2015). In this light, the fact that the domestic court also heard testimony from the applicant and had regard to other material in the file before deciding the case should not be sufficient for the Court to hold that the proceedings complied with the Convention requirements (see, similarly, *Korošec*, cited above).

9. In sum, we find it problematic that the domestic authorities relied on the appeals expert's opinion when deciding the applicant's case, without seeking any additional verification of his condition by a specialist in psychiatry, as requested by him. Whilst it is within the purview of the

domestic authorities whether or not to grant such a request, the lack of expertise in the field of psychiatry was self-evident. In such a situation, the courts' failure to accede to this request impacted on the fairness of the proceedings. We seriously doubt that without an additional assessment of the documents submitted and the applicant's condition by a psychiatric specialist the Administrative Court had sufficient information to be able to adopt its position (compare *Mantovanelli*, cited above, and *Van Kück*, cited above, § 62). We are also unable to conclude that the applicant's procedural position was on a par with that of his adversary, a State-run Fund, as required by the principle of equality of arms (see *Korošec*, cited above, §§ 56 and 57). Finally, in our view the Administrative Court failed to approach critically and to remedy the procedural shortcomings related to the lack of relevant competence of the Fund's experts. Nor was this situation subsequently remedied by the Constitutional Court (see *Ramos Nunes de Carvalho e Sa v. Portugal* [GC], nos. 55391/13 and 2 others, § 132, 6 November 2018).

10. In this case the domestic authorities had before them a particularly vulnerable person, suffering from PTSD as a result of traumatic war experiences. His vulnerability was neither addressed adequately by those authorities, nor sufficiently taken into consideration by the majority.

11. In view of the foregoing, we are of the opinion that the lack of additional verification of the applicant's condition by a specialist in psychiatry, as requested by him, constituted a violation of his right to a fair trial.