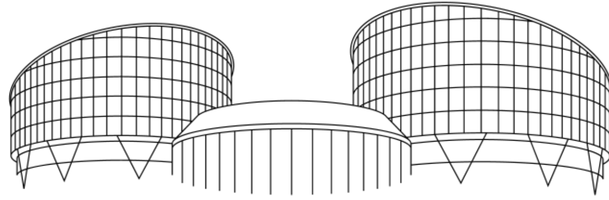

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF OLUIĆ v. CROATIA

(Application no. 61260/08)

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 Oluić v. Croatia,

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

Christos Rozakis, *President,*
Nina Vajić,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens,
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. 61260/08) 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, Mrs Marina Oluić ("the applicant"), on 18 November 2008.

2. The applicant was represented by Mrs D. Kesonja, a lawyer practising in Rijeka. The Croatian Government ("the Government") were represented by their Agent, Mrs Š. Stažnik.

3. On 9 April 2009 the President of the First Section decided to communicate the complaint concerning the applicant's right to respect for her private life and her home and the applicant's right to peaceful enjoyment of her 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 Rijeka.

5. The applicant owns a part of a house in Rijeka where she lives with her family. Since December 1999 a bar, F., has been run by a third person in the other part of the house.

6. On 16 March 2001 the applicant wrote to the Primorsko-Goranska County Sanitary Inspection, the Rijeka Office for Employment, Health and Social Welfare (*Sanitarna inspekcija Ureda za rad, zdravstvo i socijalnu skrb primorsko-goranske županije u Rijeci* – “the Sanitary Inspection”), reporting that her flat had constantly been exposed to excessive noise from the F. bar, which was open from 7 a.m. to midnight each day. She invited the Sanitary Inspectorate to measure the noise. On 30 March 2001 the applicant urged action on her request.

7. Measurements were carried out on 1 May 2001 at night by an independent expert firm. The expert found that the level of noise at night had exceeded the permitted level. In a room situated in the western part of the applicant's flat the noise level at night reached 35,9 dB (decibels) which exceeded the permitted level by 5,9 dB. In a room situated in the eastern part of the applicant's flat the noise at night reached 38,5 dB which exceeded the permitted level by 8,5 dB.

8. In a decision of 1 June 2001 the Sanitary Inspection ordered the company L., the owner of the bar F., to reduce the level of noise from their equipment for reproduction of music. The decision relied on the measurements carried out on 1 May 2001 for the purposes of these proceedings which had established that the noise from F. exceeded the prescribed limit. The decision was however quashed on 24 August 2001 by the Ministry of Health, upon an appeal lodged by the respondent and the case was remitted to the Sanitary Inspectorate.

9. Measurements carried out on 13 October 2001 at night again showed that noise from F. exceeded the permitted level by 1.8 dB to 6.9 dB depending on the exact place of measurements. The maximum levels measured inside the applicant's flat were 36.9 dB and the external noise level, at the house entrance, 57 dB.

10. Measurements carried out on 17 November 2001 again showed that noise from F. exceeded the permitted level by 2.1 to 5.2 dB depending on the exact place of measurements. The maximum level measured at the applicant's flat was 35.2 dB, and the external noise level 55.2 dB.

11. By decision of 15 February 2002 the Sanitary Inspectorate ordered the owner of the bar to add sound insulation to the walls and the inter-floor construction according to the Croatian standards in that respect.

12. An inspection carried out on 24 April 2002 established that the above decision had not been complied with.

13. On 3 May 2002 the Sanitary Inspectorate ordered the enforcement of the above decision if the owner did not comply with it by 31 May 2002. On the latter date an inspection established that the bar F. had been closed and that the owner had lodged a request with the local Tourism Office to allow the bar to be closed in order to install the required sound insulation.

14. A further inspection in the bar F., carried out on 12 June 2002 showed that sound insulation had been installed. Measurements were not

carried out because the applicant sought the replacement of the Sanitary Inspector assigned to the case. On 10 July 2002 the request was denied.

15. On 20 September 2002 a further measurement showed that the level of noise insulation on the first floor was insufficient. The owner of the bar objected to these findings and on 4 November 2002 a fresh expert report was ordered.

16. On 11 November 2002 the applicant again sought the replacement of the Sanitary Inspector assigned to the case. Her request was declared inadmissible on 26 November 2002.

17. The measurements carried out on 14 February 2003 again showed that noise from F. exceeded the permitted level. On 14 March 2003 the firm L. informed the authorities that it no longer ran the bar F. An on-site inspection of 21 March 2003 showed that the first floor of the house was no longer used as a bar, but only the ground floor. On 24 March 2003 the proceedings were terminated on the grounds that the measurements previously carried out had shown that the level of noise on the ground floor was not excessive.

18. The applicant lodged an appeal, which was dismissed by the Ministry of Health on 19 May 2003. On 25 June 2003 the applicant brought a claim before the Administrative Court (*Upravni sud Republike Hrvatske*), challenging the findings of the administrative bodies.

19. Further measurements carried out for three consecutive nights from 13 to 15 May 2005 showed that the level of noise in the applicant's flat exceeded the permitted level by 3.2 to 15.6 dB, depending on the time of measurements. The noise in the period from 10 p.m. to midnight reached levels of 40.6 dB on the night of 13 to 14 May and 34 dB on the night of 14 to 15 May.

20. On an unspecified date the applicant lodged a complaint with the Supreme Court about the length of the proceedings before the Administrative Court. On 26 March 2007 the complaint was accepted and the Supreme Court ordered the Administrative Court to adopt a decision within three months.

21. On 24 April 2007 the Administrative Court quashed the lower bodies' decisions and ordered them to establish whether the noise coming from the bar was still excessive.

22. On 9 October 2007 the second-instance administrative body annulled the decision of 24 March 2003 on the grounds that the measurements of noise in the applicant's flat and in the common yard in front of the house showed that the noise coming from F. was excessive and that the noise insulation between F. and the applicant's flat was insufficient.

23. On 4 December 2007 the Primorsko-Goranska County Sanitary Inspectorate ordered expert noise measurements to be carried out on 12 December 2007. These measurements showed that the insulation was sufficient. On 30 January 2008 the applicant requested new measurements

in the evening hours and without prior notification. This request was accepted on 17 March 2008 and the applicant was invited to indicate the date for measurement. She submitted her answer on 15 December 2008 and the measurement was carried out on 19 December 2008. They showed that the level of noise was again excessive. The maximum level of noise measured inside the applicant's flat was 31.6 dB and the external level of noise 54.6 dB.

24. On 30 January 2009 the Sanitary Inspectorate ordered the owner of the bar to reduce the noise. Measurements carried out on 23 February 2009 showed that the level of noise had not exceeded the set standards.

25. The applicant submitted medical documentation of 1 September, 4 October and 8 November 2006, in respect of her daughter, born in 1966, showing that she suffered from hearing impairment and recommending that she avoid exposure to noise. She also submitted medical documentation of 14 and 27 March 2007 in respect of her husband, born in 1944, showing that he had been treated for heart disease, including heart surgery.

II. RELEVANT DOMESTIC LAW

26. Section 4 of the Bylaw on the Maximum Permitted Levels of Noise in Areas Where People Work and Live (*Pravilnik o najvišim dopuštenim razinama buke u sredinama u kojima ljudi rade i borave*, Official Gazette no 37 of 25 September 1990) limits the maximum permitted noise-reception level inside closed residential areas at 30 dB in the period between 10 p.m. and 6 a.m. (night) and at 40 dB during day. The limit for external noise-reception level was set at 55 dB during day and 45 dB at night.

27. Section 5 of the Bylaw on the Maximum Permitted Levels of Noise in Areas Where People Work and Live (*Pravilnik o najvišim dopuštenim razinama buke u sredinama u kojima ljudi rade i borave*, Official Gazette no 145/2004 of 19 October 2004) limits the maximum permitted noise-reception level inside closed residential areas at 25 dB in the period between 10 p.m. and 6 a.m. (night) and at 35 dB during day. The limit for external noise-reception level was set at 55 dB during day and 45 dB at night.

III. NOISE LEVELS AND INTERNATIONAL STANDARDS

28. Most environmental noises can be approximately described by one of several simple measures. The sound pressure level is a measure of the air vibrations that make up sound and it indicates how much greater the measured sound is than the threshold of hearing. Because the human ear can detect a wide range of sound pressure levels, they are measured on a logarithmic scale with units of decibels (dB). If the instantaneous noise pressure level is measured this is called “A-weighting” (abbreviated dBA) whereas, if the noise pressure level is measured over a certain time span,

this is called the "equivalent continuous sound pressure level" (abbreviated LAeq). Such average levels are usually based on integration of A-weighted levels. A simple LAeq type measure will indicate reasonably well the expected effects of specific noise.

29. The World Health Organization (WHO) has published "Guidelines for Community Noise" (1999) and "Fact Sheet No. 258, on Occupational and Community Noise" (revised February 2001) which give guideline values for various environments and situations (Chapter 4 of the Guidelines). These guideline values are set at the level of the lowest adverse health effect, meaning any temporary or long-term deterioration in physical, psychological or social functioning that is associated with noise exposure, and represent the sound pressure level which affects the most exposed receiver in a given environment.

30. In relation to noise levels in homes, the guidelines state that to protect the majority of people from being seriously annoyed during the daytime, the sound pressure level on balconies, terraces and in outdoor living areas should not exceed 55 dB LAeq for steady continuous noise and should not exceed 50 dB LAeq to protect people from being moderately annoyed. These values are based on annoyance studies but most European countries have adopted a 40 dB LAeq as the maximum allowable for new developments.

31. At night, sound pressure levels at the outside façades of living spaces should not exceed 45 dB LAeq, so that people may sleep with bedroom windows open. This value has been obtained by assuming that the noise reduction from outside to inside with the window partly open is 15 dB and, where noise is continuous, the equivalent sound pressure level should not exceed 30 dB indoors, if negative effects on sleep, such as a reduction in the proportion of REM sleep, are to be avoided.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

32. The applicant complained that the State had failed to protect her from excessive noise and from being disturbed at night at her home by a bar operating in a part of the house she inhabited. She relied on Article 8 of the Convention which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society

> in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

33. The Government firstly argued that the applicant had failed to exhaust domestic remedies because she had failed to bring a civil action against the owner of the F. bar in order to seek that the noise cease and to seek damages.

34. The applicant argued that she had exhausted available remedies in the administrative proceedings and that there had been no reason to lodge a separate civil action.

35. The Court reiterates that an applicant is required to make normal use of domestic remedies which are effective, sufficient and accessible. It is also noted that, in the event of there being a number of remedies which an individual can pursue, that person is entitled to choose a remedy which addresses his or her essential grievance (see *Croke v. Ireland* (dec.), no. 33267/96, 15 June 1999). In other words, when a remedy has been pursued, the use of another remedy which has essentially the same objective is not required (see *Moreira Barbosa v. Portugal* (dec.), no. 65681/01, ECHR 2004-V, and *Jeličić v. Bosnia and Herzegovina* (dec.), no. 41183/02, 15 November 2005).

36. As to the present case the Court notes that the applicant indeed had a choice between, on the one hand, a civil action against the owner of the F. bar whereby she could have sought the removal of the source of excessive noise, cease of all further exposure to excessive noise as well as damages in relation to the exposure of her flat to excessive noise and, on the other hand, the administrative remedies before the relevant administrative bodies. The applicant opted for the later. The Court notes that in the administrative proceedings instituted by the applicant she was able to seek the relevant expert measurements to be carried out and that the administrative bodies were empowered to issue decisions ordering the reduction of the noise level. In the Court's view the administrative remedy was hence able to address a situation of the violation alleged by the applicant. Therefore, the applicant was not required at the same time to bring a civil action or to use any other remedy.

37. It follows that the Government's objection as to the exhaustion of domestic remedies in so far as it concerns the argument that the applicant had failed to bring a civil action against the owner of the bar must be rejected.

38. Secondly, the Government maintained that the applicant had failed to use all available remedies in the administrative proceedings she had instituted and that some of these proceedings were still pending. In

particular, she should have brought an action against unlawful act in court against the administrative authorities which had not carried out their own enforcement order.

39. Thirdly, the Government submitted that the complaint under Article 8 is incompatible *ratione materiae* with the Convention since that Article was not applicable in the present case. They argued that the level of noise in the applicant's home had not reached the necessary level of severity.

40. The applicant argued that she had properly exhausted available remedies and that any other remedies would have been redundant. She further argued that the level of noise had been such as to fall within the ambit of Article 8 of the Convention. The exposure of the applicant and her family to the excessive noise had persisted over a period of some eight years and occurred nightly. It had caused the applicant, her husband and their daughter severe medical problems.

41. The Court considers that both the question of exhaustion of domestic remedies in the administrative proceedings and the issue of applicability of Article 8 to the circumstances of the present case should be joined to the merits, since they are closely linked to the substance of the applicant's complaint about the State's alleged failure to protect her from excessive noise for a prolonged period of time. The Court further considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Moreover, it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

42. The applicant submitted that the measurements carried out by independent experts in the course of the administrative proceedings she had instituted had shown that the level of noise at her home had been excessive over a period of about eight years and that it occurred nightly. She argued that that situation clearly called for adequate measures in order to limit the noise exposure according to the set standards. However, the competent administrative authorities had failed to protect her from excessive noise.

43. The Government argued that the present case concerned a dispute between two private parties and not an interference by the State authorities with any of the applicant's rights protected under Article 8 of the Convention. The applicant herself had agreed to conversion of a part of the house to a bar and therefore must have known that she would have to suffer a certain level of noise, even at night since it was common knowledge that bars were generally open at night. The competent administrative authorities had conducted the relevant proceedings and in the end secured that the

applicant was no longer exposed to excessive noise. Furthermore, the applicant herself had contributed to the obstruction of the administrative proceedings because although she had been invited to indicate the time of measurements of noise as early as 17 March 2008 she had submitted her answer as late as 15 December 2008.

2. *The Court's assessment*

(a) General principles

44. Article 8 of the Convention protects the individual's right to respect for his private and family life, his home and his correspondence. A home will usually be a place, a physically defined area, where private and family life develops. The individual has a right to respect for his home, meaning not just the right to the actual physical area, but also to the quiet enjoyment of that area. Breaches of the right to respect of the home are not confined to concrete or physical breaches, such as unauthorised entry into a person's home, but also include those that are not concrete or physical, such as noise, emissions, smells or other forms of interference. A serious breach may result in the breach of a person's right to respect for his home if it prevents him from enjoying the amenities of his home (see *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 96, ECHR 2003-VIII).

45. The Court reiterates further that although there is no explicit right in the Convention to a clean and quiet environment, where an individual is directly and seriously affected by noise or other pollution, an issue may arise under Article 8 of the Convention (see *Hatton and Others*, cited above, § 96; *López Ostra v. Spain*, judgment of 9 December 1994, Series A no. 303-C; *Powell and Rayner v. the United Kingdom*, judgment of 21 February 1990, Series A no. 172, p. 18, § 40; and *Furlepa v. Poland* (dec.), no. 62101/00, 18 March 2008).

46. Although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it may involve the authorities' adopting measures designed to secure respect for private life even in the sphere of relations between individuals (see, among other authorities, *Stubbings and Others v. the United Kingdom*, judgment of 22 October 1996, *Reports* 1996-IV, pp. 1505, § 62, and *Surugiu v. Romania*, no. 48995/99, § 59, 20 April 2004). Whether the case is analysed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicants' rights under paragraph 1 of Article 8 or in terms of an interference by a public authority to be justified in accordance with paragraph 2, the applicable principles are broadly similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole. Furthermore, even in relation to the positive obligations flowing from the first paragraph of Article 8, in striking the required balance the aims

mentioned in the second paragraph may be of a certain relevance (see *Hatton and Others*, cited above, § 98).

47. The Court reiterates that the Convention is intended to guarantee rights that are “practical and effective”, not “theoretical or illusory” (see, among other authorities, *Papamichalopoulos and Others v. Greece*, 24 June 1993, Series A no. 260-B, § 42).

(b) Application of the above principles in the instant case

48. The present case does not concern interference by public authorities with the right to respect for the home, but their alleged failure to take action to put a stop to third-party breaches of the right relied on by the applicant.

49. The Court notes that the applicant's flat is subject to night-time disturbance, which allegedly unsettles the applicant. The Court must now determine whether the nuisance caused by the noise attained the minimum level of severity required for it to constitute a violation of Article 8. The assessment of that minimum is relative and depends on all the circumstances of the case, such as the intensity and duration of the nuisance and its physical or mental effects (see *Fadeyeva v. Russia*, no. 55723/00, §§ 68-69, ECHR 2005-IV, and *Fägerskiöld v. Sweden* (dec.), no. 37664/04).

50. So far the Court has addressed the problem of the State's duty to protect an applicant from excessive noise in several cases. Thus it found that no disturbance incompatible with the requirements of Article 8 of the Convention had been suffered by the applicants as regards aircraft noise (see *Hatton and Others*, cited above, §§ 11-27 and 116-18; and *Ashworth and Others v. the United Kingdom* (dec.), no. 39561/98, 20 January 2004); noise from an electric transformer (see *Ruano Morcuende v. Spain* (dec.), no. 75287/01, 6 September 2005); noise from a wind turbine (see *Fägerskiöld v. Sweden*, cited above); noise from a tailoring workshop (see *Borysiewicz v. Poland*, no. 71146/01, §§ 5 and 52-55, 1 July 2008); noise from a lorry maintenance and metal-cutting and grinding workshop (see *Leon and Agnieszka Kania v. Poland*, no. 12605/03, §§ 5 and 101-03, 21 July 2009); or noise emanating from a dentist's surgery (see *Galev. v. Bulgaria* (dec.), no. 18324/04, 29 September 2009).

51. In reaching its conclusions in the above-mentioned cases the Court relied on findings such as that the level of noise had not exceeded acceptable levels; that the applicants had failed to show that they had suffered specific adverse effects; or that no relevant measurements had been carried out.

52. The Court finds that the present case is more akin to the case of *Moreno Gómez* (see *Moreno Gómez v. Spain*, no. 4143/02, ECHR 2004-X) which concerned noise from nightclubs. Similarly to the situation in *Moreno Gómez*, and contrary to the above-mentioned cases where the Court found that the noise had not been excessive, in the present case the measuring of the level of noise in the period covering some eight years indicated that

night-time noise had been excessive. The first measurement carried out on 1 May 2001 showed even then that the level of noise had been beyond the set standards. Further measurements, carried out on 13 October and 17 November 2001, 20 September 2002, 14 February 2003 and 19 December 2008 also established that the level of noise in the applicant's flat had been beyond the set standards. The Court notes that these measurements were carried out by independent experts whose findings appear objective and were not rebuffed in the domestic proceedings.

53. In this connection the Court notes that the Bylaw on the Maximum Permitted Levels of Noise from 1999 and applicable until 19 October 2004 set the maximum noise-reception levels in the inside of living areas of residential buildings at 30 dB at night and at 40 dB during day. The maximum external noise-reception levels were set at 45 dB at night and 55 dB during daytime.

54. The measurements carried out on 1 May 2001 showed that the level of noise at night in one of the rooms in the applicant's flat reached 35,9 dB which exceeded the permitted level by 5,9 dB, while in another room it reached 38,5 dB which exceeded the permitted level by 8,5 dB.

55. The measurements carried out on 13 October 2001 at night showed that the maximum level of noise in the applicant's flat reached 36.9 dB and outside the flat 57 dB, which again exceeded the permitted levels by 16.9 dB and 12 dB, respectively.

56. The measurements carried out on 17 November 2001 at night showed that the maximum level of noise in the applicant's flat reached 35.2 dB and outside the flat 55.2 dB, which also exceeded the permitted levels by 5.2 and 10.2 dB respectively.

57. On 19 October 2004 a new Bylaw on the Maximum Permitted Levels of Noise entered into force which decreased the maximum permitted noise-reception level inside closed residential areas to 25 dB in the period between 10 p.m. and 6 a.m. (night) and at 35 dB during day. The maximum permitted external noise-reception level remained unchanged (45 dB at night and 55 dB at daytime).

58. The measurements carried out for three consecutive nights between 13 and 15 May 2005 inside the applicant's flat showed that the maximum level of noise reached 40.6 dB which exceeded the permitted level by 15.6 dB.

59. The measurements carried out on 19 December 2008 at night showed that the maximum level of noise inside the applicant's flat reached 31.6 dB and outside the house 54.6 dB which was also beyond the permitted level by 6.6 dB and 9.6 dB respectively.

60. The Court further notes that the level of noise exceeded the international standards as set by the World Health Organisation and most European countries (see §§ 28 to 31 above).

61. The Court is also mindful that the noise in question originated from a bar operating in the same house where the applicant lives. Also, the medical documentation submitted by the applicant shows that her daughter suffered from a hearing impairment and that her condition required that she was not exposed to noise.

62. In view of the volume of the noise – at night and beyond the permitted levels – and the fact that it continued over a number of years and nightly, the Court finds that the level of disturbance reached the minimum level of severity which required the relevant State authorities to implement measures in order to protect the applicant from such noise (see *Moreno Gómez*, cited above, § 60).

63. In this connection the Court notes that after the first measurements had been carried out the local administrative authority used its powers to adopt certain measures. Thus, it ordered the company L., the owner of the bar F., to reduce the level of noise from their equipment for reproduction of music. However, this decision was not complied with. In the ensuing proceedings there were significant delays. In this connection the Court stresses that regulations to protect guaranteed rights serve little purpose if they are not duly enforced. The Court notes that although the measurements carried out on 13 October and 17 November 2001 both showed an excessive noise level, the administrative authorities took no action until 15 February 2002, when they ordered the owner of the bar to add sound insulation to the walls and inter-floor construction according to the Croatian standards in that respect. However, it turned out that the insulation installed was insufficient.

64. The Court notes further that the applicant lodged her administrative claim on 25 June 2003 while the Administrative Court decided on it almost four years later, on 24 April 2007. In the Court's view such a long delay made the remedy used by the applicant ineffective and resulted in her suffering prolonged nightly exposure to excessive noise. It was only on 23 February 2009 that the level of noise coming from the bar F. was found to be within acceptable limits. These facts show that the applicant suffered an infringement of her right to respect for her home as a result of the authorities' failure to take action to deal with the night-time disturbances.

65. Having regard to the Government's objections that were joined to the merits of the complaint, the Court notes that the level of noise to which the applicant was exposed for a number of years reached the necessary level of severity and that therefore Article 8 applies in the circumstances of the present case. Furthermore, the national authorities allowed this situation to persist for almost eight years while the various proceedings before the administrative authorities and the Administrative Court were pending, thus rendering these proceedings ineffective.

66. In these circumstances, the Court finds that the respondent State has failed to discharge its positive obligation to guarantee the applicant's right to respect for her home and her private life. Accordingly, the Court finds that

there has been a violation of Article 8 of the Convention and dismisses the Government's objections as to the applicability of Article 8 and the exhaustion of domestic remedies.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 OF THE CONVENTION

67. The applicant complained of a violation of her right to peaceful enjoyment of her possessions. She relied on Article 1 of Protocol No. 1 to the Convention.

68. The Government contested that argument.

69. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

70. Having regard to the finding relating to Article 8, the Court considers that it is not necessary to examine whether in this case there has been a violation of Article 1 of Protocol No. 1.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

71. Lastly, the applicant complained under Article 2 of the Convention that her life had become unbearable and under Article 6 of the Convention that she had had no access to a court.

72. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that this part of the application does not disclose any appearance of a violation of the Convention. It follows that it is inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. 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

74. The applicant claimed 20,000 euros (EUR) in respect of pecuniary and EUR 50,000 non-pecuniary damage.

75. The Government deemed the claim excessive.

76. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand it awards the applicant EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

B. Costs and expenses

77. The applicant also claimed EUR 3,700 for costs and expenses incurred before the Court.

78. The Government made no comments.

79. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,700 for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

C. Default interest

80. 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. *Decides* to join to the merits the Government's objections as to the applicability of Article 8 in the present case and as to the exhaustion of domestic remedies and rejects them;

2. *Declares* the complaints concerning the applicant's right to respect for her private life and her home and the applicant's right to peaceful enjoyment of her possessions admissible and the remainder of the application inadmissible;

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

4. *Holds* that there is no need to examine the complaint under Article 1 of Protocol No. 1 to the Convention;

5. *Holds*

(a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts which are to be converted into Croatian kunas at the rate applicable on the date of settlement:

(i) EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage;

(ii) EUR 3,700 (three thousand seven hundred euros) in respect of costs and expenses;

(iii) any tax that may be chargeable to the applicant on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* 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