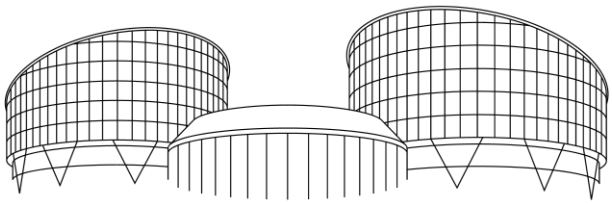

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 49740/06
by Maja ŠUBAŠIĆ
against Croatia

The European Court of Human Rights (First Section), sitting on 30 March 2010 as a Chamber composed of:

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

and André Wampach, *Deputy Section Registrar*,

Having regard to the above application lodged on 18 November 2006,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mrs Maja Šubašić, is a Croatian national who was born in 1977 and lives in Split. She was represented before the Court by Mr T. Vukičević, an advocate practising in Split. The Croatian Government ("the Government") were represented by their Agent, Mrs Š. Stažnik.

A. The circumstances of the case

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

1. Background to the case

On 28 August 1998, while visiting Athens, the applicant gave birth prematurely to her twin daughters, S.A. and K.A. Because she had given birth when she was only six months pregnant, her daughters barely survived. They were kept in a hospital in Athens for three months, two and a half months of which was spent in intensive care. They were discharged on 28 November 1998.

On 25 September 1998 the applicant made a request to the Split Regional Office of the Croatian Heath Insurance Fund (*Hrvatski zavod za zdravstveno osiguranje – Područni ured Split*) seeking reimbursement in respect of the costs of her medical treatment. On 22 October 1998 the Split Regional Office granted the request and awarded her the equivalent in Croatian kunas (HRK) of 1,455,177 Greek drachmas (GRD) for urgent medical services rendered abroad.

On 20 October 1998 in Athens the applicant married I.B.A., an Italian national and the father of her daughters.

2. Relevant proceedings

On 12 November 1998 the applicant made another request to the Split Regional Office of the Croatian Heath Insurance Fund, this time seeking reimbursement in respect of the costs of the medical treatment of her daughters.

On 20 April 1999 the Regional Office dismissed her request, finding that her daughters were not registered as insured persons with the Croatian Health Insurance Fund.

The applicant appealed, arguing, *inter alia*, that her daughters had acquired the status of insured persons at the moment of their birth and that they had been formally registered as such after all official documents had been obtained, having regard to the fact that they had been born abroad.

On 17 April 2000 the Directorate of the Croatian Health Insurance Fund (*Hrvatski zavod za zdravstveno osiguranje – Direkcija*), acting as the second-instance authority, dismissed the applicant's appeal and upheld the first-instance decision. After it had collected certain information from various administrative authorities, the Directorate established that the daughters had been recorded in the register of births (*matica rođenih*) on 15 April 1999 and in the register of citizens and the domicile register on 22 April 1999, and that their health insurance cards were valid from 26 April 1999. Against that background the Directorate reasoned as follows:

"From the printout of the database [of insured persons] the second-instance authority has established that [the appellant's claim that her daughters] K.A. and S.A. were insured 'through the mother' is not correct because their status as persons insured with the Croatian Health Insurance Fund was recognised on 23 April 1999 with the registration date of 26 April 1999 as family members of the insurance holder: [their grandmother] S.Š.

The case file shows that the twins S.A. and K.A. at the time of their medical treatment in Athens did not have the status of insured persons with the Croatian Health Insurance Fund, owing to the appellant's failure to notify the Consulate of the Republic of Croatia in Athens of the birth of the children; whereas all the necessary notifications were made only after the first-instance decision had been adopted.

Pursuant to section 55 paragraph 1 of the Ordinance on Rights Related to Compulsory Health Insurance and the Criteria for their Enjoyment ... the status of an insured person is established by the Croatian Health Insurance Fund on the basis of the prescribed application [for registration]...

The insured person acquires the rights related to compulsory health insurance on the day their status as an insured person is established.

Section 3 of the Ordinance on the Criteria for Registration and Deregistration of an Insured Person requires legal and natural persons to apply for [registration with] the compulsory health insurance with the Fund's competent regional office within eight days after the conditions for recognition as an insured person have been met.

Section 7 of the same Ordinance allows for the status of family member [as the ground for insurance] to be established only in respect of persons having their domicile or habitual residence in the Republic of Croatia.

The enclosed domicile certificates show ... that K. and S.A. have their domicile in Split, ... – from 22 April 1999, that is, after the adoption of the [impugned first-instance] decision, after which they were also registered with compulsory health insurance ...

[In the light of the] foregoing the ... arguments adduced by the appellant are unfounded ..."

The applicant then brought an action in the Administrative Court (*Upravni sud Republike Hrvatske*) challenging the second-instance decision.

On 11 November 2004 the Administrative Court dismissed her action. It held as follows:

"Section 3 of the Ordinance on the Criteria for Registration and Deregistration of an Insured Person and the Establishment of Status of the Person Insured under Compulsory Health Insurance requires natural persons to apply for compulsory health insurance with the Fund's competent regional office within eight days of the conditions for recognition as an insured person having been met.

Under section 56 paragraph 2 point 7 of the Ordinance on Rights Related to Compulsory Health Insurance and the Criteria for their Enjoyment ... the status of an insured person is established from the date of birth, on the basis of the application [for registration].

However, section 7 of the Ordinance on the Criteria for Registration and Deregistration of an Insured Person and the Establishment of Status of the Person Insured under Compulsory Health Insurance ... allows the status of a family member

[as the ground for insurance] to be established only in respect of persons having their domicile or habitual residence in the Republic of Croatia, unless an international agreement provides otherwise.

Since it was established during the proceedings ... that at the time of their medical treatment abroad the ... twins did not have the status of insured persons with the Fund in accordance with section 2 of the Ordinance on the Rights Related to Compulsory Health Insurance and the Criteria for their Enjoyment, it follows that, according to section 3 of that Ordinance, they did not have the right to healthcare nor the right to reimbursement [of costs of medical services rendered abroad.]

In the light of the foregoing, this court has no legal possibility to find the impugned decision unlawful."

The applicant then lodged a constitutional complaint alleging violations of her constitutional rights to equality, judicial review of administrative decisions, a fair hearing and healthcare. On 25 May 2006 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed the applicant's complaint. In finding so it held that:

"The administrative authority conducting proceedings following a request for reimbursement of costs of medical treatment abroad is bound by the ... existence (or non-existence) of the status of the insured person ... This status of the complainant's children was decided in other proceedings, different from those from which the impugned decisions originate.

In proceedings following a request for reimbursement of costs of medical treatment abroad (or in subsequent proceedings following an administrative action) the administrative authority or the Administrative Court are neither authorised under the relevant legislation to question the lawfulness and the correctness of the proceedings for acquisition of the status of an insured person ... nor to alter the decisions delivered in those proceedings (namely, the documents which were, as a result of those proceedings, issued to the complainant for her children), even in cases when those proceedings have not been conducted properly and in accordance with the law. Therefore, when reaching the impugned decisions, neither the competent administrative authority nor the Administrative Court could have examined questions such as the lawfulness and the correctness of the registration of domicile of the new-born children with the date when the request for registration was made (and not with the date of birth) or the lawfulness and the correctness of the issuance of the health insurance cards with a date different from the date of birth.

It follows that the possible violations of the constitutional rights which occurred in the proceedings for acquisition of the status of an insured person ... cannot be examined in the instant constitutional court proceedings.

Examining the [impugned] decisions by which the complainant was denied reimbursement of the costs of her children's medical treatment abroad, because when these costs were incurred the children had not been recognised as having the status of insured persons ..., the Constitutional Court has established that these decisions are based on the relevant provision of section 2 of the Ordinance on the Rights and Criteria for the Use of Healthcare Abroad.

In finding so, it has to be noted that the decision of the second-instance administrative authority and the judgment of the Administrative Court are partly based on legislation that is not relevant in the present case ... in particular ... section 3 of the Ordinance on the Criteria for Registration and Deregistration of an Insured

Person and the Establishment of Status of the Person Insured under Compulsory Health Insurance. That provision provides for a time-limit of eight days to apply for [registration with] compulsory health insurance. The above-mentioned provision relates, however, only to legal and natural persons obliged to pay health insurance contributions, which [is not the case with] the complainant or her mother, who is the person from whose health insurance the insurance of the complainant's children is derived.

This finding, however, has no bearing on the possibility of a different resolution of the case or [this] court's view that the impugned decisions are lawful and did not violate the constitutional rights of the complainant or her children."

B. Relevant domestic law and practice

1. The Constitution

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 58

"Everyone shall be guaranteed the right to health care, in accordance with the law."

Article 62

"The State shall protect maternity, children and youths, and shall create social, cultural, educational, material and other conditions promoting the right to a decent life."

Article 64(1)

"Everyone shall have a duty to protect children and the infirm."

2. The Health Insurance Act and related subordinate legislation

(a) The Health Insurance Act

The relevant provisions of the Health Insurance Act (*Zakon o zdravstvenom osiguranju*, Official Gazette of the Republic of Croatia, nos. 75/1993, 55/1996, 1/1997. (consolidated text), 109/1997, 13/1998, 88/1998, 10/1999, 34/1999, 69/2000, 59/2001 and 82/2001), in force at the material time, read as follows:

II. COMPULSORY HEALTH INSURANCE

Section 3

For the purposes of this Act, the persons having rights related to compulsory health insurance [insured persons in the broad sense] are the insured [in the strict sense], their family members and other persons insured in certain circumstances.

Section 6 (1)

FAMILY MEMBERS

For the purposes of this Act the following persons are considered family members of the insured:

...

2. children (...) if the insured provides for their maintenance,

...

4. grandchildren, ... , [if] the insured provides for their maintenance.

...

Section 79

(1) Only an individual with the established status of an insured person may enjoy rights related to health insurance.

(2) The status of an insured person shall be established by the [Croatian Health Insurance] Fund, and shall be proved by issuance of [their health insurance card].

(3) ...

(b) Related subordinate legislation

(i) Ordinance on the Rights Related to Compulsory Health Insurance and the Criteria for their Enjoyment

The relevant provisions of the Ordinance on the Rights Related to Compulsory Health Insurance and the Criteria for their Enjoyment (*Pravilnik o pravima, uvjetima, i načinu ostvarivanja prava iz obveznog zdravstvenog osiguranja*, Official Gazette of the Republic of Croatia, nos. 4/1994, 81/1994, 31/1995, 57/1996, 71/1996, 108/1996 and 79/1997), in force at the material time, read as follows:

1. Establishment of the status of an insured person

Section 54

(1) The status of an insured person shall be established by the [Croatian Health Insurance] Fund by issuance of [their health insurance card].

(2) On the day of the establishment of the status of an insured person, [that] person shall acquire the rights related to compulsory health insurance.

Section 55

(1) The status of an insured person shall be established by the [Croatian Health Insurance] Fund on the basis of the prescribed application [for registration] submitted by a legal or natural person ...

(2) If the Fund accepts the application [for registration] it shall issue [a health insurance card] to the insured person whereby the proceedings instituted by that application shall be terminated.

(3) If the Fund refuses the submitted application or establishes the status of the insured person on a different ground, it shall issue a ... decision, which it shall serve on the applicant and the interested person [the third party].

(4) The appeal to the Directorate [of the Croatian Health Insurance Fund] lies against the decision referred to in the paragraph 3 of this section.

Section 56

(1) When submitting the application referred to in section 55 of this Ordinance, the applicant is required to enclose appropriate evidence proving the legal ground of insurance, such [grounds] are, for example ... family ties with the insured person, maintenance, and so on.

(2) On the basis of the application and evidence referred to in paragraph 1 of this section, the status of an insured person shall be established [from the date] of:

- ...

- birth ... for persons whose right to health insurance is derived from the right of another person.

(ii) Ordinance on the Criteria for Registration and Deregistration of an Insured Person and the Establishment of the Status of the Person Insured under Compulsory Health Insurance

The relevant provisions of the Ordinance on the Criteria for Registration and Deregistration of an Insured Person and the Establishment of Status of the Person Insured under Compulsory Health Insurance (*Pravilnik o načinu prijavljivanja i odjavljivanja, te utvrđivanju statusa osigurane osobe iz obveznog zdravstvenog osiguranja*, Official Gazette of the Republic of Croatia, nos. 57/1994, 89/1994 and 65/2001), in force at the material time, read as follows:

II. ESTABLISHMENT OF THE STATUS OF AN INSURED PERSON

Section 2

(1) The status of an insured person shall be directly established by the competent regional office of the [Croatian Health Insurance] Fund or through its branch office, on the basis of an application for [registration with] compulsory health insurance, its certification and by issuance of [their health insurance card].

(2) ...

(3) The status of an insured person for family members of the insured having their domicile or habitual residence in the territory of the Republic of Croatia shall be established by the regional office of the Fund which established the status of the insured for the insurance holder.

(4) ...

Section 3 (1)

Legal or natural persons who are obliged to pay [health insurance] contributions are obliged to apply for [registration with] compulsory health insurance (application for registration, application for registration of changes in the insurance and for deregistration) with the competent regional office of the Fund within eight days of the conditions for recognition of the status of an insured person having been met ...

Section 7

The status of a family member of the insured may only be established in respect of persons having their domicile or habitual residence in the Republic of Croatia, unless an international agreement provides otherwise.

(iii) Decision on the Form and Content of the Document Proving the Status of Persons Insured with the Croatian Health Insurance Fund

The relevant provisions of the Decision on the Form and Content of the Document Proving the Status of Persons Insured with the Croatian Health Insurance Fund (*Odluka o sadržaju i obliku isprave kojom se dokazuje status osigurane osobe Hrvatskog zavoda za zdravstveno osiguranje*, Official Gazette of the Republic of Croatia nos. 57/1994, 140/1997, 31/1999 and 77/2000), in force at the material time, read as follows:

Section 6 (2)

The period of validity of ... [the health insurance card] shall count from the date of acquisition of the status of an insured person.

Section 8 (1)

The [health insurance] card shall be issued by the Fund on the basis of the application for [registration with] compulsory health insurance ...

(iv) Ordinance on the Rights and Modalities of, and the Conditions for, the Use of Healthcare Abroad

The relevant provisions of the Ordinance on the Rights and Modalities of, and the Conditions for, the Use of Healthcare Abroad (*Pravilnik o pravima, uvjetima i načinu korištenja zdravstvene zaštite u inozemstvu*, Official Gazette of the Republic of Croatia, nos. 6/1994 and 87/1996), in force at the material time, read as follows:

Section 2

(1) The right to healthcare abroad belongs to persons insured with the [Croatian Health Insurance] Fund ... and in particular:

- ...

- persons who are staying abroad for other reasons, in cases of medical urgency,

- ...

Section 17

(1) Persons insured with the Fund who have undergone medical treatment or examination abroad may have the costs of [their] healthcare recognised in the amount of costs of medical services of the Fund, under the condition that the medical treatment or examination is subsequently approved by the [competent] chamber of physicians.

(2) Exceptionally, if the healthcare was provided in the case of medical urgency in order to avert an immediate threat to [the health of] the insured person, the costs of the healthcare shall be recognised in accordance with the provisions of an international agreement, or in accordance with the issued invoices if the insured person has

undergone medical treatment in a state with which no international agreement has been concluded.

(3) A person who receives the healthcare referred to in the preceding paragraph shall notify the Fund immediately with a view to further supervising the provision of the urgent healthcare and assessing the need for the insured person's return (transportation) to the Republic of Croatia.

3. The Domicile and Residence of Citizens Act

(a) Relevant provisions

The relevant provisions of the Domicile and Residence of Citizens Act (*Zakon o prebivalištu i boravištu građana*, Official Gazette of the Republic of Croatia, no. 53/1991, read as follows:

Section 2

A domicile is a place where a citizen has settled with the intention of permanently living there.

Section 4(1) and (2)

Domicile of minors ... shall be established according to the last common domicile of their parents.

When the parents of such persons do not have common domicile or are not married, their domicile shall be established according to the domicile of the parent exercising parental authority [that is, having custody].

Section 6(1) and (2)

Citizens have a duty to register and deregister domicile, register habitual residence and register a change of address.

Applications [for registration or deregistration] referred to in paragraph 1 of this section for the persons without capacity to act shall be lodged by their parents or legal guardians.

Section 8

Application for registration of domicile or change of address shall be lodged within eight days of deregistration of the previous domicile or address.

The [competent] official shall issue a certificate of domicile or of change of address.

(b) The Supreme Court's practice

In its decision, no. Gr 650/01-2 of 10 October 2001 the Supreme Court (*Vrhovni sud Republike Hrvatske*) interpreted the Domicile and Residence of Citizens Act in the following way:

"... [It] follows that a citizen establishes domicile in a certain place on the day he or she settles in that place with the intention of permanently living there ... and not from the moment he or she applied to register [his or her] domicile."

4. The Administrative Procedure Act

The relevant provisions of the Administrative Procedure Act (*Zakon o općem upravnom postupku*, Official Gazette of the Socialist Federal Republic of Yugoslavia 47/1986 (consolidated text), and Official Gazette of the Republic of Croatia no. 53/1991), which was in force at the material time, provided as follows:

Section 144(1) provided that, if the authority before which the administrative proceedings were pending found that the case could not be decided without deciding an issue the resolution of which was within the competence of a court or other authority (preliminary issue), it could decide on that issue itself or stay the administrative proceedings until the competent authority had resolved it.

Section 249 provided that administrative proceedings that had ended in a definitive decision could be reopened if, *inter alia*, the contested decision had been based on a preliminary issue, a substantial part of which the competent authority had later resolved differently.

COMPLAINTS

1. The applicant complained under Article 1 of Protocol No. 1 to the Convention that the domestic authorities had refused to grant her claim for reimbursement of the costs of her daughters' medical treatment abroad.

2. She further complained under Article 8 of the Convention that this refusal also violated her right to respect for her family life.

3. The applicant also complained under Article 14 of the Convention that she had suffered discrimination on the ground that she had given birth abroad.

4. Lastly, the applicant complained under Articles 6 § 1 and 13 of the Convention, in respect of the above-mentioned proceedings, about the assessment of evidence by the domestic courts and about the outcome of the proceedings.

THE LAW

A. Alleged violation of Article 1 of Protocol No. 1 to the Convention

The applicant complained that the domestic authorities had infringed her property rights. She complained that, on the basis of the relevant legislation, she could have reasonably expected that her claim for reimbursement for the costs of her daughters' medical treatment abroad would be granted. She

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."

The Government contested that argument.

1. The submissions of the parties

(a) The Government

The Government argued that the applicant had failed to exhaust domestic remedies. They noted that the applicant had complained of the refusal of the domestic authorities to reimburse the costs of her daughters' medical treatment abroad. However, the key issue in this regard was the date on which the applicant's daughters had acquired the status of insured persons with the Croatian Health Insurance Fund. From the facts of the case it followed that the applicant had never disputed the date the Fund considered to be the date on which the applicant's daughters had obtained the status of insured persons, that is, the date of their registration as insured persons.

The Government argued that the applicant should have noticed that this date was incorrect and lodged a request with the Fund asking it to establish that her daughters had acquired the status of insured persons on the day they had been born. If, at that stage, the Fund had dismissed her request she would have had a right to appeal, bring an action in the Administrative Court and, ultimately, a constitutional complaint. However, she had not done so and had thereby failed to exhaust the available domestic remedies.

The Government further argued that making use of available remedies in the proceedings for reimbursement of costs, would not have corrected the applicant's failure to institute separate administrative proceedings with a view to changing the date on which her daughters had acquired the status of insured persons. This was the case because the domestic authorities which had examined the applicant's request for reimbursement of costs were not in a position to decide on that preliminary issue.

In the light of the above, the Government considered the application inadmissible for non-exhaustion of domestic remedies.

(b) The applicant

The applicant contested this argument and considered her complaint admissible.

2. The Court's assessment

The Court observes that various domestic authorities, in particular, the Directorate of the Health Insurance Fund, the Administrative Court and the Constitutional Court upheld the initial decision of the Fund's Regional Office in Split to refuse the applicant's request for reimbursement of the costs of the medical treatment of her daughters but that each of those authorities supported their decisions with different reasons.

The second-instance authority relied on the applicant's failure to register her daughters with the Health Insurance Fund in due time, considering that the necessary notifications could have been made through the Croatian consulate in Athens. Moreover, because the applicant had registered her daughters only after the first-instance decision had been adopted, that authority could not be blamed for refusing the applicant's request on the ground that the daughters had simply not figured in the database of insured persons. Furthermore, given that the daughters had eventually been insured as family members of their grandmother (the applicant's mother), pursuant to relevant legislation, they needed to have their domicile in Croatia. However, their domicile in Croatia had been registered only after the first-instance decision had been adopted.

In this connection the Court notes that the Administrative Court in its judgment of 11 November 2004, emphasised that the status of an insured person was acquired from the date of birth. That court, however, stressed the requirement that persons insured as family members needed to have their domicile in Croatia and proceeded to conclude that, at the time when the medical services had been rendered, the applicant's daughters had not had their domicile in Croatia and thus had not had the status of insured persons.

The Court notes in this respect that the Constitutional Court eventually held that, pursuant to the relevant legislation, the applicant's daughters should have been registered as insured persons from their date of birth, irrespective of the date when the application for their registration was lodged and that the same principle should have been applied when registering their domicile.

However, the Constitutional Court dismissed the applicant's constitutional complaint because it was of the view that, in the proceedings complained of, the lower authorities could not have questioned the apparently incorrect entries in the Fund's register (and the resultant issuance of the health insurance cards with the date of registration rather than the date of birth) and the citizen's domicile register, as these entries had resulted from different proceedings.

Having regard to the reasoning of the Constitutional Court, the Court notes that, under Croatian law, as it follows in particular and by converse implication from section 144(1) of the Administrative Procedure Act, an administrative authority is not allowed to decide on a preliminary issue that

has already been finally decided as the main issue by a court or the same or different administrative authority in separate proceedings – a rule that, in the Court's view, serves to maintain the principle of separation of powers and promote legal certainty.

The Court further notes that the Croatian legal system nevertheless allowed, and still allows, the applicant to correct the mistakes made by the domestic authorities when registering her daughters as insured persons with the Croatian Health Insurance Fund and their domicile with the Ministry of the Interior, and, ultimately, to obtain reimbursement of costs of their medical treatment in Greece. Namely, by instituting separate administrative proceedings and relying, in particular, on the decision of the Constitutional Court of 25 May 2006, the applicant could have asked the Ministry of the Interior to change the incorrect entries in its domicile register and record the domicile of her daughters from their date of birth. In the same way, that is, by instituting separate administrative proceedings, the applicant could have requested the Croatian Health Insurance Fund to change the incorrect entries in its database of insured persons and register her daughters from their date of birth and, consequently, to issue the health insurance cards in respect of her children reflecting those changes.

After having done so and obtaining decisions rectifying the above-mentioned errors, the applicant could have either resubmitted her request for reimbursement of costs of medical treatment of her daughters abroad or filed a petition for reopening of the proceedings complained of by relying on section 249 of the Administrative Procedure Act.

However, she has not done so.

It follows that this complaint is inadmissible under Article 35 § 1 of the Convention for non-exhaustion of domestic remedies and must be rejected pursuant to Article 35 § 4 thereof.

B. Alleged violations of Articles 8 and 14 of the Convention

The applicant also complained under Article 8 of the Convention that the decisions of the domestic authorities had infringed her right to family life because the refusal to reimburse her for the medical costs could not be justified by any of the legitimate aims enumerated in paragraph 2 of that Article. The applicant further complained under Article 14 of the Convention that she had been discriminated against because her children had been born abroad and that none of the problems she had encountered would have arisen had she given birth in Croatia. Articles 8 and 14 read as follows:

Article 8

"1. Everyone has the right to respect for his private and family life ....

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."

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Government contested that argument, arguing, as in respect of the complaint under Article 1 of Protocol No. 1 above, that the applicant had failed to exhaust domestic remedies.

The Court refers to its above-mentioned finding in respect of the applicant's complaint concerning the right to peaceful enjoyment of possessions. It follows that these complaints are also inadmissible under Article 35 § 1 of the Convention for non-exhaustion of domestic remedies and must be rejected pursuant to Article 35 § 4 thereof.

C. Alleged violation of Article 6 § 1 of the Convention

Lastly, the applicant complained under Articles 6 § 1 and 13 of the Convention about the evaluation of evidence in the above-mentioned proceedings, which, in her view, led to their unfavourable outcome. Articles 6 and 13 read as follows:

Article 6 § 1

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

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Government contested that argument.

The Court notes that the applicant complained about the outcome of the proceedings and the assessment of evidence by the domestic courts, which, unless they were arbitrary, the Court is unable to examine under that Article. She 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 her arguments before the domestic 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.

As regards the applicant's complaint under Article 13 of the Convention, the Court reiterates that the "effectiveness" of a "remedy" within the meaning of that Article does not depend on the certainty of a favourable outcome for the applicant. (see *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-X).

It follows that these complaints are inadmissible under Article 35 § 3 of the Convention as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 thereof.

In so far as the applicant's complaint under Article 13 may be understood as a complaint of non-availability of a remedy for the complaints made under other provisions relied on, it follows from the Court's above finding of non-exhaustion of domestic remedies that the applicant's complaint in this regard is also manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

André Wampach
Deputy Registrar

Anatoly Kovler
President