



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

FIRST SECTION

CASE OF GABRIĆ v. CROATIA

(Application no. 9702/04)

JUDGMENT

STRASBOURG

5 February 2009

FINAL

05/05/2009

This judgment may be subject to editorial revision.

In the case of Gabrić v. Croatia,

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

Christos Rozakis, *President*,

Nina Vajić,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 15 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 9702/04) 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 citizen of Bosnia and Herzegovina, Mrs Darinka Gabrić (“the applicant”), on 9 December 2003.

2. The applicant was represented by Mrs M. Trninić, an advocate practising in Slavonski Brod. The Croatian Government (“the Government”) were represented by their Agent, Mrs Š. Stažnik.

3. On 14 September 2006 the President of the First Section decided to communicate the complaint concerning the right of property to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

4. The Government of Bosnia and Herzegovina, having been informed of their right to intervene (Article 36 § 1 of the Convention and Rule 44 § 2 (a) of the Rules of Court), did not avail themselves of this right.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, who is of Serbian origin, was born in 1952 and lives in Pforzheim (Germany).

6. On 2 January 2002, at around 8.35 p.m., the applicant, on her way to Germany, was crossing the border between Bosnia and Herzegovina and

Croatia at Slavonski Brod. She was stopped by the Croatian customs officers, who first searched her car and found undeclared goods hidden in its luggage compartment. In particular, in the place for the spare wheel the officers found 61 cartons of cigarettes of various brands and 9.5 kg of coffee.

7. The customs officers then searched the applicant and found 30,500 German marks (DEM), which she had also failed to declare under section 74a(1) of the Foreign Currency Act and section 9(2) of the Prevention of Money Laundering Act (see paragraphs 14 and 15 below). They seized DEM 20,000 while allowing the applicant to keep the remaining DEM 10,500 as that amount roughly corresponded to 40,000 Croatian kunas (HRK), the sum she was not required to declare pursuant to the above-mentioned legislation. The report drafted on the spot indicates that the applicant informed the customs officers that she had obtained the money through a bank loan in Germany and had been carrying it back there.

A. Criminal proceedings instituted against the applicant

8. On 3 January 2002 the Slavonski Brod Municipal State Attorney's Office indicted the applicant before the Slavonski Brod Municipal Court for the criminal offence of avoiding customs controls, prescribed in section 298(3) of the Criminal Code, accusing her of not having declared 61 cartons of cigarettes. On 4 January 2002 the court found the applicant guilty as charged and sentenced her to six months' imprisonment but suspended the sentence (*uvjetna osuda*) for a period of two years provided that in that period she did not commit a further offence. The court also ordered the confiscation (*oduzimanje predmeta*) of 61 cartons of cigarettes as a security measure (*sigurnosna mjera*). As the applicant waived her right to appeal, the judgment immediately became final.

B. Administrative offences proceedings instituted against the applicant

9. On 3 January 2002 the customs authorities instituted administrative offences proceedings (*prekršajni postupak*) against the applicant before the Foreign Currency Inspectorate of the Ministry of Finance (*Ministarstvo financija, Devizni inspektorat* – "the Ministry").

10. On 21 March 2002 the Ministry found the applicant guilty of having committed an administrative offence and fined her HRK 6,000. At the same time, the Ministry imposed a protective measure (*zaštitna mjera*) confiscating DEM 20,000 pursuant to section 99a(2) of the Foreign Currency Act. In so deciding it held as follows:

"In her written defence the accused admitted that she had not declared the money when entering the Republic of Croatia because she had not known that she was

required to do so. She submitted that she had taken out a loan from her bank in Germany and that she had been bringing the money to Yugoslavia in order to buy a flat. Since she had not found the flat to her liking she had decided to wait for a while until she found something [more] favourable. ...

... She submitted that she had not been aware that she had to declare the money at the customs. She is asking that the seized money be returned to her because she needs it for the purchase of a flat, and if she does not buy a flat she has to return the money to the bank.

...

[The Ministry] could not accept the defence of the accused that she had not known that she had to declare foreign currency to the customs authorities, considering that this argument could not constitute a ground for exonerating her from ... liability. ...

In the determination of the amount of the fine, the personal situation of the accused was taken into account, namely the fact that she is divorced and a mother of two children, as well as her financial situation, namely that she is earning EUR 1,200 per month and owns a construction lot. [The Ministry] considered as a mitigating circumstance the fact that the accused had confessed.

The decision to impose the protective measure of confiscating the object of the offence in the amount of DEM 20,000 was rendered on the basis of section 99a of the Foreign Currency Act, which provides that objects of an offence are to be confiscated in favour of the State Budget of the Republic of Croatia. Having assessed the motives of the offence and the circumstances in which it had been committed, [the Ministry] found no particularly justified reasons for not imposing the protective measure, or for imposing the protective measure of partial confiscation of the objects of the offence, because the confession of the accused was the only mitigating circumstance in this case, which in itself (without any other particularly mitigating circumstances) is not sufficient for a decision to return the temporarily seized money, as the object of the offence."

11. The Ministry's decision was served on the applicant on 24 May 2002, after which she appealed against it. Together with the appeal she submitted a letter from her bank in Germany, dated 27 May 2002, confirming that according to the loan agreement of 21 November 2001, she had received a loan of DEM 38,334.27 for the purposes of buying a flat in the Federal Republic of Yugoslavia.

12. On 19 June 2002 the High Court for Administrative Offences (*Visoki prekršajni sud Republike Hrvatske*) dismissed the applicant's appeal and upheld the Ministry's decision, endorsing the reasons given therein. The decision was served on the applicant on 2 September 2002.

13. The applicant then lodged a constitutional complaint, alleging, *inter alia*, a violation of her constitutionally protected right of property. On 21 May 2003 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed her complaint, finding no violation of any of the constitutional rights relied on, and served its decision on the applicant on 9 June 2003.

II. RELEVANT DOMESTIC LAW

14. The relevant part of the Foreign Currency Act (*Zakon o osnovama deviznog sustava, deviznog poslovanja i prometu zlata*, Official Gazette nos. 91A/93, 36/98 and 32/01), in force at the material time, in so far as relevant, read as follows:

Section 72(1)

“Foreign currency and securities in foreign currency may be freely brought into the Republic of Croatia.”

Section 74a(1)

“All Croatian and foreign natural persons crossing the State border are required to declare to the competent customs officer any ... cash or cheques in domestic or foreign currency of the value prescribed by the statute regulating prevention of money laundering.”

Section 97a

“A fine of at least 5,000.00 kunas for an administrative offence shall be imposed on any Croatian or foreign natural person ... who attempts to take or takes across the State border cash or cheques of the value referred to in section 74a of this Act, without declaring them to the competent customs officer.”

Section 99a

“(1) The competent customs officer shall temporarily seize cash and cheques in domestic or foreign currency taken across the State border in contravention of section 74a of this Act ..., and shall also, along with making an administrative offence complaint, pay that amount without delay into the special account of the Foreign Currency Inspectorate of the Ministry of Finance of the Republic of Croatia.

(2) The cash and cheques which are the objects of the administrative offence referred to in section 97a of this Act shall be confiscated by virtue of the decision on the administrative offence, in favour of the State Budget of the Republic of Croatia.

(3) ...

(4) Exceptionally, in particularly justified situations in which special mitigating circumstances exist, the authority deciding on the administrative offence may decide that the cash and cheques which are the objects of the administrative offence referred to in paragraphs 1 and 2 of this section shall not be confiscated or shall be confiscated only in part.”

15. Section 9(1) of the Prevention of Money Laundering Act (*Zakon o sprječavanju pranja novca*, Official Gazette nos. 69/97, 106/97 (corrigendum), 67/01 and 114/01), as in force at the material time, read as follows:

“Customs [authorities]... shall inform the Office [for the Prevention of Money Laundering] of any legal transfer or attempted illegal transfer across the State border of cash or cheques in domestic or foreign currency of the value of 40,000 kunas or more, within the period of three days of finding out about such transfer or attempt of illegal transfer.”

16. Section 298 of the Criminal Code (*Kazneni zakon*, Official Gazette nos. 110/97, 27/98 (corrigendum), 129/00 and 51/01), as in force at the material time, read as follows:

Avoiding customs controls

Section 298

“(1) Anyone who carries a large quantity of goods or objects of great value across the customs border, avoiding customs controls, shall be punished by a fine or by imprisonment not exceeding three years.

(2) Anyone who organises a group or individuals for the perpetration of the criminal offence referred to in paragraph 1 of this section, or a network of resellers or middlemen for the sale of goods not cleared by customs, shall be punished by imprisonment from six months to five years.

(3) The same penalty as referred to in paragraph 1 of this section shall be imposed on anyone who carries across the customs border, avoiding customs controls, goods whose production or distribution is restricted or prohibited.

(4) Anyone who organises a group or individuals for the perpetration of the criminal offence referred to in paragraph 3 of this section shall be punished by imprisonment from one to eight years.

(5) An attempt to commit a criminal offence referred to in paragraphs 1 to 3 of this section shall be punishable.

(6) Goods that are the object of the criminal offence referred to in paragraph 1 of this section shall be confiscated.”

THE LAW

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

17. The applicant complained that the decision of the domestic authorities in the administrative offences proceedings to both fine her and confiscate DEM 20,000 from her for having failed to declare that sum at the customs had been excessive and thus violated her right of property. 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.”

18. The Government contested that argument.

A. Admissibility

19. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 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 arguments of the parties

(a) The Government

20. The Government admitted that there had been an interference with the applicant's right of property when the domestic authorities had confiscated DEM 20,000 from her. However, the interference had been lawful and had pursued a legitimate aim. The confiscation as a sanction for the administrative offence in question had been prescribed by section 99a(2) of the Foreign Currency Act (see paragraph 14 above), and had been a measure aimed at combating money laundering.

21. At the outset, the Government emphasised that money laundering was a particularly dangerous form of crime, and had been identified as such not only at national, but also at international level. For example, many international instruments of the European Union were devoted to the fight against money laundering.

22. As to proportionality, the Government first explained that the sanction for the administrative offence of which the applicant had been found guilty, and which involved a breach of anti-money-laundering regulations, consisted of two elements: (a) imposition of a fine, and (b) mandatory confiscation of the money which was the object of the offence. When assessing the proportionality of the sanction, the competent domestic

authorities took into account both of these elements. In the applicant's case, mitigating circumstances had been taken into account when imposing the fine. However, they had not been of such a character to justify the exception to the obligation to confiscate the undeclared amount of money.

23. Secondly, the Government submitted that the domestic authorities had interpreted the relevant provisions on confiscation of money as a sanction for breaches of anti-money-laundering regulations restrictively, but consistently. That interpretation was, in the Government's view, within the "margin of appreciation" left to the domestic authorities. Owing to this consistency in interpretation, the sanction imposed on the applicant lacked arbitrariness, and the present case was therefore to be distinguished from the case of *Baklanov v. Russia* (no. 68443/01, 9 June 2005), where the Court had condemned inconsistencies in the interpretation of similar provisions.

24. Thirdly, the Government argued that the applicant should have been aware that the transfer of a considerable amount of cash across the border was subject to certain restrictions provided for by law. Therefore, she could have reasonably been expected to make some enquiries into this matter before setting out on a journey. The facts presented in the domestic proceedings did not indicate that her alleged ignorance had been in any way justified.

25. Fourthly, the Government did not wish to speculate on the actual purpose of the money confiscated from the applicant but nevertheless stressed, in abstract terms, that the mere fact that the money came from legitimate sources did not necessarily mean that it was intended for legitimate purposes (in this connection they cited, as an example, Article 5 of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS no. 198), which specifically referred to the seizure of property acquired from legitimate sources which had been intermingled with property derived from proceeds of crime). In the Government's submission, the circumstances of the present case indicated that the money in question had been intended for suspicious purposes. They noted in this connection that the overall circumstances in which the administrative offence had been committed were not mitigating for the applicant: apart from carrying a large sum of money in cash, she had been found to be smuggling a large quantity of cigarettes and coffee. As section 99a(4) of the Foreign Currency Act (see paragraph 14 above) referred to particularly justified cases and particularly mitigating circumstances, it was obvious that these requirements had not been satisfied in the applicant's case. This did not mean that the applicant's arguments had not been taken into account; in the given circumstances they had simply been insufficient to justify the application of section 99a(4) of the Foreign Currency Act.

26. In view of the foregoing, the Government submitted that there had been no breach of Article 1 of Protocol No. 1 to the Convention in the applicant's case.

(b) The applicant

27. The applicant pointed out that immediately after the customs officers had detected the money she had been carrying, she had informed them of its origin and purpose and had produced original documents from her bank in Germany proving that the money had been obtained through a housing loan. Furthermore, with her appeal to the High Court for Administrative Offences she had enclosed a letter from her bank, in which the bank had confirmed her statements as regards the origin and the purpose of the money.

28. The applicant admitted that she had failed to declare the money at the customs and accepted that she had to be fined on that account. However, there had been no valid reason to confiscate from her the entire amount of DEM 20,000. She was divorced, a mother of two children, a semi-qualified worker with modest assets and salary who was employed as a "guest worker" (*Gastarbeiter*) in Germany on a temporary basis, and was not well versed in the law. Owing to an occupational disease from working in the chemical industry, she had often been on sick-leave, during which she had received a monthly allowance of only DEM 2,000. Therefore, the confiscated amount – with which she had intended to buy herself a flat in the Federal Republic of Yugoslavia where she could live after her retirement – had represented a "real fortune" for her.

29. The imposition of the confiscation measure had also been completely unwarranted in view of the fact that it had been obvious that the applicant had not committed the administrative offence in question wilfully but only with negligence.

30. However, irrespective of all these considerations, the domestic authorities had treated, and eventually punished, the applicant as a notorious criminal and a dangerous smuggler, which objectively she was not. They had therefore failed to strike the requisite fair balance between the general interest of the community and her right of property.

2. The Court's assessment

31. The Court reiterates that Article 1 of Protocol No. 1 guarantees in substance the right of property and comprises three distinct rules. The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of possessions. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The second and third rules,

which are concerned with particular instances of interference with the right to peaceful enjoyment of property, are to be construed in the light of the general principle laid down in the first rule (see, among other authorities, *Draon v. France* [GC], no. 1513/03, § 69, 6 October 2005).

32. The “possession” at issue in the present case was an amount of money in German marks which was confiscated from the applicant by a decision of the administrative authorities, subsequently upheld by the judicial authorities. It is not disputed between the parties that the confiscation constituted interference with the applicant’s right of property, and that Article 1 of Protocol No. 1 is therefore applicable. It remains to be determined whether the measure was covered by the first or second paragraph of that Article.

33. The Court reiterates its consistent approach that a confiscation measure, even though it does involve a deprivation of possessions, nevertheless constitutes control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1 (see *Riela and Others v. Italy* (dec.), no. 52439/99, 4 September 2001; *Arcuri and Others v. Italy* (dec.), no. 52024/99, ECHR 2001-VII; *C.M. v. France* (dec.), no. 28078/95, ECHR 2001-VII; *Air Canada v. the United Kingdom*, 5 May 1995, § 34, Series A no. 316-A; and *AGOSI v. the United Kingdom*, 24 October 1986, § 34, Series A no. 108). Accordingly, it considers that the same approach must be followed in the present case.

34. The Court further notes that the parties were also in agreement that the interference was lawful, as the confiscation was based on sections 74a(1) and 99a of the Foreign Currency Act, taken in conjunction with section 9(1) of the Prevention of Money Laundering Act. Furthermore, it was common ground that the interference pursued a legitimate aim in the general interest, namely the prevention of money laundering. The Court sees no reason to hold otherwise.

35. Accordingly, the only question for the Court to determine is whether there was a reasonable relationship of proportionality between the means employed by the authorities to achieve that aim and the protection of the applicant’s right to the peaceful enjoyment of her possessions. The Court must examine in particular whether the interference struck the requisite fair balance between the demands of the general interest of the public and the requirements of the protection of the applicant’s right of property, and whether it imposed a disproportionate and excessive burden on her, regard being had in particular to the severity of the sanction.

36. The administrative offence of which the applicant was found guilty consisted of her failure to declare DEM 20,000 in cash, which she was carrying, to the customs authorities. It is important to note that the act of bringing foreign currency in cash into Croatia was not illegal under Croatian law, as it was expressly allowed by section 72(1) of the Foreign Currency Act (see paragraph 14 above). Not only was it lawful to import foreign

currency as such but also the sum which could be legally transferred, or, as in the present case, physically carried across the Croatian customs border, was not in principle restricted (see paragraph 14 above). This element distinguishes the instant case from cases in which the confiscation measure applied either to goods whose importation was prohibited (see *AGOSI*, cited above, concerning a ban on importing gold coins, and *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, ECHR 2005-VI, concerning the banning of Yugoslav aircraft falling under the sanctions regime) or vehicles used for transporting prohibited substances or trafficking in human beings (see *Air Canada*, cited above; *C.M. v. France* (dec.), cited above; and *Yildirim v. Italy* (dec.), no. 38602/02, ECHR 2003-IV).

37. Furthermore, in the proceedings before the Ministry of Finance the applicant explained that she had obtained the money through a bank loan in Germany for the purposes of buying a flat in the Federal Republic of Yugoslavia (see paragraph 10 above). Together with her appeal against the first-instance decision she submitted documentary evidence in support of those factual allegations (see paragraph 11 above). However, it seems that the domestic authorities did not address that issue in particular as they apparently considered it irrelevant, at least for the imposition of the confiscation measure. The Court therefore considers that the lawful origin of the confiscated cash was not contested. On that ground it distinguishes the present case from cases in which the confiscation measure extended to assets which were the proceeds of a criminal offence (see *Phillips v. the United Kingdom*, no. 41087/98, §§ 9-18, ECHR 2001-VII), which were deemed to have been unlawfully acquired (see *Riela and Arcuri*, both cited above, and *Raimondo v. Italy*, 22 February 1994, § 29, Series A no. 281-A) or were intended for use in illegal activities (see *Butler v. the United Kingdom* (dec.), no. 41661/98, 27 June 2002).

38. The Court further notes that the applicant did not have a criminal record and that she had not been suspected of, or charged with, any criminal offence prior to the incident at issue. It is true, as pointed out by the Government, that on the same occasion the customs officers found other undeclared goods in the applicant's car, in particular 61 cartons of cigarettes, and that she was criminally convicted on that account. However, for failing to declare the cartons of cigarettes the applicant was convicted of a less serious form of the criminal offence of avoiding customs controls prescribed in paragraph 3 of section 298 of the Criminal Code, and not, as the Government submitted (see paragraph 25 above), of smuggling, as an aggravated form of the same offence prescribed in paragraphs 2 and 4 of that section (see paragraphs 8 and 16 above). More importantly, the applicant was not criminally convicted or even prosecuted for failing to declare the money in question, as doing so did not amount to a criminal offence but only to an administrative offence. Therefore, there is nothing to

suggest that by confiscating the amount of DEM 20,000 from the applicant the authorities sought to forestall any criminal activities, such as money laundering, drug trafficking, or evasion of customs duties. The money she carried had been lawfully obtained and it was permissible to bring that amount into Croatia as long as she declared it to the customs authorities. It follows that the illegal (but not criminal) conduct which could be attributed to her in respect of the money was her failure to declare it at the customs.

39. The Court considers that, in order to be proportionate, the interference should correspond to the severity of the infringement, and the sanction to the gravity of the offence it is designed to punish – in the instant case the failure to comply with the declaration requirement – rather than to the gravity of any presumed infringement which has not, however, actually been established (such as an offence of money laundering or evasion of customs duties). The confiscation measure in question was not intended as pecuniary compensation for damage – as the State had not suffered any loss as a result of the applicant's failure to declare the money – but was deterrent and punitive in its purpose (compare *Bendenoun v. France*, 24 February 1994, § 47, Series A no. 284). In the instant case the applicant had already been fined for the administrative offence of failing to declare the money at the customs. It has not been convincingly shown or indeed argued by the Government that that sanction alone was not sufficient to achieve the desired deterrent and punitive effect and prevent future breaches of the declaration requirement. In these circumstances, the confiscation of the entire amount of the money that should have been declared, as an additional sanction to the fine was, in the Court's view, disproportionate, in that it imposed an excessive burden on the applicant.

40. There has accordingly been a violation of Article 1 of Protocol No. 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

41. On the basis of the same facts the applicant adduced in support of her complaint under Article 1 of Protocol No. 1, she also complained under Article 6 § 1 of the Convention that the above-mentioned administrative offences proceedings were unfair and that the domestic courts involved were not impartial, as well as under Article 14 that she had been discriminated against on the basis of her nationality and ethnic origin. Those Articles in their relevant part read as follows:

Article 6 § 1

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an ... impartial tribunal established by law.”

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.”

42. The Court notes that the applicant in substance complained about the outcome of the proceedings, which, unless there was any arbitrariness, it is unable to examine under Article 6 § 1 of the Convention. In the light of all the material in its possession, the Court considers that in the impugned proceedings the applicant was able to submit her arguments before the courts, which addressed them in decisions that were duly reasoned and not arbitrary. Moreover, no specific facts or arguments which could lead to the conclusion that the courts had lacked impartiality or that the proceedings had otherwise been unfair were put forward by the applicant, and the case does not appear to raise any issue in that respect.

43. Likewise, the applicant’s complaint under Article 14 appears unsubstantiated as she provided no details whatsoever. There is no evidence to suggest that in deciding as they did the domestic authorities were guided by improper motives, such as the applicant’s nationality or ethnic origin.

44. These complaints are therefore inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed EUR 10,000 in respect of pecuniary damage together with the accrued default interest at the annual rate of 8% running from 2 January 2002, the date of the confiscation, until payment. She explained that the amount of EUR 10,000 corresponded to the amount of DEM 20,000 confiscated from her by the Croatian authorities and that the interest rate was equal to the rate stipulated in the loan agreement she had concluded on 21 November 2001 with her bank in Germany. She also claimed EUR 2,000 in respect of non-pecuniary damage.

47. The Government contested these claims.

48. The Court has found that the principal sum claimed by the applicant was confiscated from her in breach of Article 1 of Protocol No. 1. It therefore accepts the applicant's claim in respect of pecuniary damage and awards her EUR 10,000 under this head, plus any tax that may be chargeable on that amount.

49. As regards non-pecuniary damage, the Court considers that finding of a violation of Article 1 of Protocol No. 1 to the Convention constitutes in itself sufficient just satisfaction in the circumstances.

B. Costs and expenses

50. The applicant also claimed HRK 6,100 for the costs and expenses incurred before the domestic courts and HRK 12,200 for those incurred before the Court.

51. The Government contested these claims.

52. 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 were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 150 for costs and expenses in the domestic proceedings and EUR 1,700 for the proceedings before the Court.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the right of property admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

- (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable to the applicant, in respect of pecuniary damage;
- (ii) EUR 1,850 (one thousand eight hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

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

Done in English, and notified in writing on 5 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President