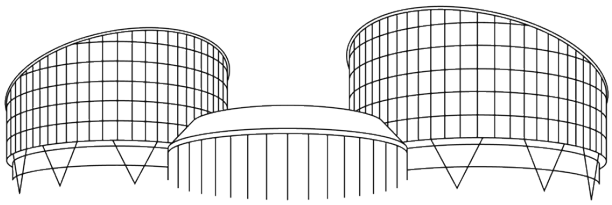

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF BULFRACHT LTD v. CROATIA

(Application no. 53261/08)

JUDGMENT

STRASBOURG

21 June 2011

FINAL

21/09/2011

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

In the case of Bulfracht Ltd v. Croatia**,**

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

Anatoly Kovler, *President,*
Nina Vajić,
Peer Lorenzen,
George Nicolaou,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 31 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 53261/08) 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 Bulfracht Ltd, a company incorporated under Bulgarian law ("the applicant company"), on 7 October 2008.

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

3. On 9 February 2010 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

4. The Government of Bulgaria, 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 company, Bulfracht Ltd., is a limited liability company incorporated under Bulgarian law with its head office in Sofia (Bulgaria).

6. On 13 April 1990 company J.A. from Rijeka, a shipping agent, brokered a contract of carriage of goods by sea between the applicant

company as the ship's operator (carrier) and the Cypriot company TWS as the charterer. The applicant company undertook to transport a certain quantity of steel tubes from Odessa to Kaohsiung, while TWS assumed the obligation to pay the freight to the applicant company, amounting to 515,099.20 United States dollars (USD). It would appear that the freight was not paid and that on 15 May 1990 company J.A. sent a fax message to the applicant company, which the latter interpreted as the former undertaking to pay the freight as a guarantor.

7. Since the freight had not been paid, on 15 April 1991 the applicant company brought a civil action in Rijeka Commercial Court (*Trgovački sud u Rijeci*) against company J.A., seeking payment of USD 515,099.20.

8. On 26 September 2000 the Rijeka Commercial Court dismissed the applicant company's action, finding that the text of the fax message of 15 May 1990 could not be interpreted as giving rise to any obligation on the part of the defendant.

9. On 6 July 2004 the High Commercial Court (*Visoki trgovački sud Republike Hrvatske*) dismissed the applicant company's appeal and upheld the first-instance judgment.

10. On 20 October 2004 the applicant company lodged an appeal on points of law (*revizija*) against the second-instance judgment.

11. On 27 April 2006 the Supreme Court (*Vrhovni sud Republike Hrvatske*) declared inadmissible *ratione valoris* the applicant company's appeal on points of law, as it found that the value of the subject matter of the dispute was below the statutory threshold of HRK 500,000. In doing so it reasoned as follows:

> "The exchange rate between the US dollar and the domestic currency on 15 April 1991, that is, on the day the action was brought, was 14.2694 [former Yugoslav] dinars [YUD] to USD 1, which for USD 515,099.20 amounted to [YUD] 7,350,156.53... After conversion of the amount sought by the plaintiff, pursuant to the [relevant] legislation, the value of the subject matter of the dispute in the present case is HRK 7,350.16."

12. On 12 March 2008 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed a constitutional complaint lodged by the applicant company and served its decision on the company's representative on 7 April 2008. The relevant part of that decision reads as follows:

> "In the constitutional complaint the complainant alleged violation of the constitutional right to a fair hearing guaranteed by Article 29 paragraph 1 of the Constitution.
>
> ...
>
> In the present case the Constitutional Court finds that the contested decision of the Supreme Court was rendered in the proceedings conducted in accordance with the law, on the basis of valid application of the substantive law.

The Constitutional Court therefore holds that that the proceedings which preceded those before the Constitutional Court were conducted in a manner which enabled the complainant to have a fair hearing and did not result in a violation of the constitutional right guaranteed by Article 29 paragraph 1 of the Constitution."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Civil Procedure Act

1. Relevant provisions

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

C h a p t e r t w o

JURISDICTION AND COMPOSITION OF THE COURT

2. S u b j e c t m a t t e r j u r i s d i c t i o n

Determining the value of the subject matter of the dispute

Section 35

"(1) When the value of the subject matter of the dispute is relevant for determining subject matter jurisdiction, the composition of the court, the right to lodge an appeal on points of law and in other cases provided for in this Act, only the value of the principal claim shall be taken into account as the value of the subject matter of the dispute.

(2) Interest, costs of proceedings, liquidated damages and other secondary claims shall not be taken into account unless they constitute the principal claim."

Section 40 (2)

"... when an action does not concern a sum of money, the relevant value shall be the value of the subject matter of the dispute indicated by the plaintiff in the statement of claim (*u tužbi*)."

C h a p t e r f o u r t e e n

ACTION

Content of an action

Section 186 (2)

"When the jurisdiction of the court or its composition, or the right to lodge an appeal on points of law, depends on the value of the subject matter of the dispute, and the object of an action is not the sum of money, the plaintiff shall in the statement of claim (*u tužbi*) indicate the value of the subject matter of the dispute."

C h a p t e r t w e n t y s i x

EXTRAORDINARY REMEDIES

1. Appeal on points of law

Section 382(1) provides that the parties may lodge an appeal on points of law (*revizija protiv presude*) against the second-instance judgment if the value of the subject matter of the dispute of the contested part of the judgment exceeds a certain amount of money (statutory threshold). The statutory threshold in commercial cases was changed as follows:

Currency	Value	Period
YUD	30,000	1 July 1977 – 26 November 1982
YUD	300,000	27 November 1982 – 21 November 1987
YUD	4,500,000	22 November 1987 – 5 October 1989
YUD	45,000,000	6 October 1989 – 31 December 1989
YUD	4,500	1 January 1990 – 10 April 1990
YUD	45,000	11 April 1990 – 22 December 1991
HRD	45,000	23 December 1991 – 7 January 1993
HRD	8,000,000	8 January 1993 – 12 May 1994
HRK	8,000	13 May 1994 – 5 November 1999
HRK	500,000	6 November 1999 – 30 September 2008
HRK	100,000	after 1 October 2008

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

Section 428a

"(1) When the European Court of Human Rights has found a violation of a human right or fundamental freedom guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms or additional protocols thereto ratified by the Republic of Croatia, a party may, within thirty days of the judgment of the European Court of Human Rights becoming final, file a petition with the court in the Republic of Croatia which adjudicated in the first instance in the proceedings in which

> the decision violating the human right or fundamental freedom was rendered, to set aside the decision by which the human right or fundamental freedom was violated.
>
> (2) The proceedings referred to in paragraph 1 of this section shall be conducted by applying, *mutatis mutandis*, the provisions on the reopening of proceedings.
>
> (3) In the reopened proceedings the courts are required to respect the legal opinions expressed in the final judgment of the European Court of Human Rights finding a violation of a fundamental human right or freedom."

2. The case-law of the Supreme Court

14. In its case no. Rev 885-05-2 of 9 November 2005 the Supreme Court held that the plaintiff was not authorised to subsequently change the value of the subject matter of the dispute indicated in his statement of claim unless he also amended the action (by increasing, supplementing or replacing the initial claim).

B. The 1999 Amendments to the Civil Procedure Act

1. Relevant provisions

15. On 6 November 1999 the Amendments to the Civil Procedure Act (*Zakon o izmjenama i dopunama Zakona o parničnom postupku*, Official Gazette no. 112/1999 of 29 October 1999 – "the 1999 Amendments") entered into force. They raised the statutory threshold for lodging an appeal on points of law (*revizija*) to the Supreme Court in commercial matters from HRK 8,000 to HRK 500,000. Accordingly, in the period between 6 November 1999 and 1 October 2008, for such an appeal to be admissible *ratione valoris* in commercial matters the value of the subject matter of the dispute had to exceed the latter amount. The Amendments were also immediately applicable to pending proceedings except to those cases in which an appeal on points of law had already been lodged.

2. The Constitutional Court's case-law

16. In decision no. U-III-2646/2007 of 18 June 2008 the Constitutional Court found violations of the complainant's constitutional rights to equality before the courts and to a fair hearing and quashed the Supreme Court's decision declaring the appeal on points of law inadmissible *ratione valoris,* in a case where the plaintiff, who had brought his action in 1978, had sought payment of 48,600 German marks. The Constitutional Court held, *inter alia*:

> "When the civil proceedings for payment of a relatively high amount of foreign currency have lasted thirty years, and the value of the subject matter of the dispute in [those proceedings] (which at the time the action was brought greatly exceeded the amount prescribed for admissibility of an appeal on points of law) is being determined

according to the nominal amount of the domestic currency (which had become worthless due to revaluation) and not according to the real value of the amount sought, then such a long lapse of time always benefits one party. The outcome in its favour is due solely to the protracted nature of the proceedings, which upsets the other party's equal status before the law."

17. In decision no. U-III-4361/2008 of 10 June 2009 in a similar case, the Constitutional Court confirmed the above case-law.

C. Legislation relating to revaluation and changes of the domestic currency

18. The Dinar Revaluation Act (*Zakon o promjeni vrijednosti dinara*, Official Gazette of the Socialist Federal Republic of Yugoslavia no. 83/89), which entered into force on 1 January 1990, established the new value of the Yugoslav dinar (YUD) so that one new dinar corresponded to 10,000 old dinars.

19. By the Decision on the Introduction of the Croatian Dinar as the Currency on the Territory of the Republic of Croatia (*Odluka o uvođenju hrvatskog dinara kao sredstva plaćanja na teritoriju Republike Hrvatske*, Official Gazette of the Republic of Croatia no. 71/1991), which entered into force on 23 December 1991, the Republic of Croatia introduced its own currency, the Croatian dinar (HRD). The Yugoslav dinar (YUD) was replaced by the Croatian dinar at an exchange rate of YUD 1 to HRD 1.

20. On 13 May 1994 the Decision on the Termination of the Validity of the Decision on the Introduction of the Croatian Dinar as the Currency on the Territory of the Republic of Croatia and on the Manner and Time of Calculation of Sums Expressed in Croatian Dinars into Kunas and Lipas (*Odluka o prestanku važenja Odluke o uvođenju hrvatskog dinara kao sredstva plaćanja na teritoriju Republike Hrvatske, te o načinu i vremenu preračunavanja iznosa izraženih u hrvatskim dinarima u kune i lipe*, Official Gazette of the Republic of Croatia no. 37/1994) entered into force, introducing the Croatian kuna (HRK) as the currency of the Republic of Croatia. It provided that the Croatian dinar should be replaced by the Croatian kuna at an exchange rate of 1,000 dinars to one kuna.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LACK OF ACCESS TO COURT

21. The applicant company complained about the refusal of the Supreme Court to examine the merits of its appeal on points of law. It relied on Article 6 § 1 of the Convention, which reads as follows:

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

22. The Government contested that argument.

A. Admissibility

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

B. Merits

1. The arguments of the parties

(a) The Government

24. The Government first submitted that, in a situation such as in the present case – where the merits of the applicant company's action had been examined at two levels of jurisdiction – the impossibility of lodging an appeal on points of law, in cases where the legislator had clearly prescribed the requirements for its admissibility, could not be considered to have been a violation of the right of access to court or the right to a fair hearing.

25. The Government further argued that the way the Supreme Court had calculated the value of the subject of the dispute had been in accordance with the law, and that it was not for the Court to interpret domestic law. In particular, the decision of the Supreme Court to declare the applicant company's appeal on points of law inadmissible had been based on the relevant provisions of the Civil Procedure Act and the 1999 Amendments to the Civil Procedure Act. Moreover, given that the applicant company in its action had claimed an amount in a foreign currency, that amount – in order for the value of the subject matter of the dispute to be calculated – had to be

converted into domestic currency at to the rate applicable on the day the action had been brought.

26. The Government further argued that rules limiting access to the Supreme Court by setting a financial threshold for admissibility of appeals on points of law had the legitimate aim of reducing the number of cases of lesser importance before the highest court. The legislation relating to revaluation and changes to the domestic currency had the same effect and purpose. Namely, as the domestic currency devalued due to inflation, certain cases had become less important.

27. In the light of the foregoing, the Government considered that Croatian legislation had provided clear and unambiguous rules for cases where the value of the subject matter in the dispute had dropped owing to a change and devaluation of the domestic currency, and had regulated the effect of such changes on the right to lodge an appeal on points of law. In their view, there had therefore been no violation of Article 6 § 1 of the Convention.

(b) The applicant

28. The applicant company admitted that it was the task of the domestic courts, and not the Court, to interpret domestic law. However, the Court's role was to ascertain whether the effects of such interpretation were incompatible with the Convention.

29. The applicant company also conceded that the legislation setting a financial threshold for appeals on points of law pursued the legitimate aim of reducing the Supreme Court's workload by preventing cases of lesser importance from reaching it. However, the same aim could not be attributed to the legislation relating to revaluation and changes of domestic currency that had been used to declare inadmissible the applicant company's appeal on points of law.

30. The applicant company further submitted that USD 515,099.20, which was the amount it sought in the above civil proceedings, if converted into domestic currency at any moment during those proceedings, had always exceeded the statutory threshold for lodging an appeal on points of law in commercial matters prescribed by the Civil Procedure Act. Therefore, the effect of the interpretation of legislation relating to revaluation and changes to the domestic currency by the Supreme Court in the present case, which interpretation had resulted in inadmissibility of the applicant company's appeal on points of law, had been such that it had restricted that company's right of access to court in such a way that the very essence of the right had been impaired.

2. The Court's assessment

31. The Court reiterates that Article 6 § 1 of the Convention secures to everyone the right to have any claim relating to his civil rights and

obligations brought before a court or tribunal. The right of access, namely the right to institute proceedings before a court in civil matters, constitutes one aspect of this "right to court" (see, notably, *Golder v. the United Kingdom*, 21 February 1975, §§ 28-36, Series A no. 18). However, this right is not absolute, but may be subject to limitations. These are permitted by implication, since the right of access by its very nature calls for regulation by the State. In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rests with the Court. However, these limitations must not restrict or reduce the access left to an individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, for example, *Ashingdane v. the United Kingdom*, 28 May 1985, § 57, Series A no. 93, and *Stubbings and Others v. the United Kingdom*, 22 October 1996, § 50, *Reports of Judgments and Decisions* 1996-IV).

32. Turning to the present case, the Court first observes that the applicant company was the plaintiff in the above civil proceedings instituted in April 1991, in which it sought payment of USD 515,099.20 (see paragraph 7 above). After the first- and the second-instance courts ruled against it, on 20 October 2004 the applicant company lodged an appeal on points of law with the Supreme Court (see paragraphs 8-10 above). On 27 April 2006 that court declared the applicant company's appeal inadmissible *ratione valoris,* considering that the value of the subject matter of the dispute did not reach the statutory threshold of HRK 500,000 (see paragraph 11 above). The applicant company's subsequent constitutional complaint was to no avail (see paragraph 12 above).

33. In the Court's view, the Supreme Court's decision may be regarded as imposing a restriction on the applicant's right of access to court. It reiterates in this connection that Article 6 of the Convention does not compel the Contracting States to set up courts of appeal or of cassation. However, where such courts do exist, the guarantees of Article 6 must be complied with, for instance, in that litigants must be guaranteed an effective right of access to courts for determination of their "civil rights and obligations" (see, for example, *Brualla Gómez de la Torre v. Spain*, 19 December 1997, § 37, *Reports* 1997-VIII). The Court must therefore examine whether the applicant company's right of access to court was unduly restricted by the Supreme Court's decision in the present case.

34. As regards the aim of the restriction, the Court considers that setting the financial threshold for appeals to the Supreme Court in order to stop that court being overloaded with cases of lesser importance is a legitimate aim (see, *mutatis mutandis*, *Brualla Gómez de la Torre,* cited above, §§ 35-36).

Accordingly, the existence of such a threshold *per se* is not incompatible with the Convention.

35. As regards the proportionality of the restriction, the Court reiterates that it is in the first place for the national authorities, and notably the courts, to interpret and apply the domestic law. This applies in particular to the interpretation by courts of rules of a procedural nature. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see, for example, *Tejedor García v. Spain*, 16 December 1997, § 31, *Reports* 1997-VIII; and *Pérez de Rada Cavanilles v. Spain*, 28 October 1998, § 43, *Reports* 1998-VIII). Furthermore, the manner in which Article 6 § 1 applies to courts of appeal or of cassation depends on the special features of the proceedings concerned and account must be taken of the entirety of the proceedings conducted in the domestic legal order and the court of cassation's role in them; the conditions of admissibility of an appeal on points of law may be stricter than for an ordinary appeal (see, for example, *Brualla Gómez de la Torre,* cited above, § 37).

36. In order to satisfy itself that the very essence of the applicant company's "right to a tribunal" was not impaired by declaring its appeal on points of law inadmissible, the Court must examine whether the way in which the Supreme Court calculated the value of the subject matter of the dispute in the present case, infringed the proportionality principle.

37. The Court notes in this connection that under section 35(1) of the Civil Procedure Act the value of the subject matter of the dispute is equal to the principal amount a plaintiff seeks to obtain by his or her civil action (see paragraph 13 above), and that the applicant company in its civil action of 13 April 1990 sought USD 515,099.20 (see paragraph 7 above). The Court also notes that the applicant company did not seek payment of a counter value of USD 515,099.20 in domestic currency but asked that it be awarded that sum in USD, and that the domestic courts would have awarded the amount claimed in USD had they found for the applicant company. The Court further observes that according to the Croatian National Bank, the exchange rate between HRK and US dollar on 20 October 2004, that is the day on which the applicant company lodged its appeal on points of law, was HRK 5.880826 to one US dollar. That means that the counter value in domestic currency of the applicant company's claim on that day was HRK 3,029,208.77, a value that exceeded the statutory threshold of HRK 500,000 sixfold.

38. That being so, the Court considers that the way in which the Supreme Court calculated the value of the subject matter of the dispute in the present case may be qualified as excessive formalism. The restriction in question was therefore not proportionate to the legitimate aim pursed, and impaired the very essence of the applicant company's right of access to court as secured by Article 6 § 1 of the Convention.

39. This view is corroborated by the subsequent case-law of the Constitutional Court (see paragraphs 16-17 above), which decided to change its practice three months after dismissing on 12 March 2008 the applicant company's constitutional complaint against the Supreme Court decision. In particular, on 18 June 2008 the Constitutional Court, in its decision no. U-III-2646/2007, found that the manner in which the Supreme Court had calculated the value of the subject matter of the dispute for the purposes of determining whether or not it had jurisdiction *ratione valoris* to examine the merits of an appeal on points of law in the proceedings, which had lasted a long time and where the plaintiff had sought payment of a relatively high amount of foreign currency, was contrary to the right to a fair hearing guaranteed both by the Convention and by the Croatian Constitution (see paragraph 16 above).

40. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION

41. The applicant company further complained, also under Article 6 § 1 of the Convention, about the outcome of the above proceedings. In particular, it complained that the judgments of the domestic courts had not given adequate reasons.

42. The Court notes that the applicant company complained about the outcome of the proceedings, which, unless it was arbitrary, the Court is unable to examine under that Article. Moreover, there is no evidence to suggest that the 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 company was able to submit its arguments before courts which offered the guarantees set forth in Article 6 § 1of the Convention and which addressed those arguments in decisions that were duly reasoned and not arbitrary.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant company did not submit any claim in respect of pecuniary or non-pecuniary damage.

46. The Court first reiterates that the most appropriate form of redress in cases where it finds that an applicant has not had access to court in breach of Article 6 § 1 of the Convention would, as a rule, be to reopen the proceedings in due course and re-examine the case in keeping with all the requirements of a fair hearing (see, for example, *Lungoci v. Romania*, no. 62710/00, § 56, 26 January 2006; *Yanakiev v. Bulgaria*, no. 40476/98, § 90, 10 August 2006; and *Lesjak v. Croatia*, no. 25904/06, § 54, 18 February 2010). In this connection the Court notes that the applicant company can now file a petition under section 428a of the Civil Procedure Act (see paragraph 13 above) for the reopening of the above civil proceedings in respect of which the Court has found a violation of Article 6 § 1 of the Convention.

47. Having regard to the foregoing, and given that the applicant company's representative did not submit a claim for just satisfaction in respect of pecuniary or non-pecuniary damage, the Court considers that there is no call to award any sum on that account.

B. Costs and expenses

48. The applicant claimed HRK 35,640 for the costs and expenses incurred before the domestic courts and HRK 10,000 for those incurred before the Court.

49. The Government contested these claims.

50. 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 documents in its possession and the above criteria, the Court considers it reasonable to award the sum of 674 euros (EUR) for costs and expenses in the domestic proceedings and EUR 1,348 for the proceedings before the Court, plus any tax that may be chargeable on the applicant company.

C. Default interest

51. 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 access to court admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*

   (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,022 (two thousand and twenty-two euros), plus any tax that may be chargeable on the applicant company, in respect of costs and expenses, to be converted into Croatian kunas at the rate applicable on the date of settlement;

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

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

Done in English, and notified in writing on 21 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Anatoly Kovler President