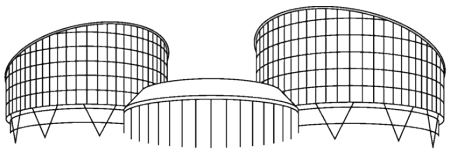

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ZAGREBAČKA BANKA D.D. v. CROATIA

(Application no. 39544/05)

JUDGMENT

STRASBOURG

12 December 2013

FINAL

12/03/2014

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

In the case of Zagrebačka banka d.d. v. Croatia,

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*
and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 19 November 2013,

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

PROCEDURE

1. The case originated in an application (no. 39544/05) 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 Zagrebačka banka d.d. ("the applicant bank"), a company incorporated under Croatian law, on 13 October 2005.

2. The applicant bank was represented by Ms D. Rose Q.C. of Blackstone Chambers, a barrister practising in London, Mr B. Porobija of Law Firm Porobija & Porobija, an advocate practising in Zagreb, and Mr A. Walls and Ms J. Masterson of Linklaters Solicitors, solicitors practising in London. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. The applicant bank alleged, in particular, that the enforcement proceedings leading to the seizure of a substantial amount of money from its account had been unfair, and that the seizure itself and/or the subsequent distribution of the sum seized in the bankruptcy proceedings opened against the enforcement creditor had entailed a violation of its right to peacefully enjoy its possessions.

4. On 12 November 2007 and 8 September 2009 the application was communicated to the Government.

5. On 13 January 2011 the Chamber decided to adjourn the examination of the application awaiting the outcome of the case of *Kotov v. Russia* (no. 54522/00), that was pending before the Grand Chamber at the time.

6. On 19 November 2013 the Chamber decided to dispense with a hearing.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant bank, Zagrebačka banka d.d., is a joint stock company incorporated under Croatian law which has its registered office in Zagreb.

A. Civil proceedings

1. Principal proceedings

8. The applicant bank was founded on the basis of a "self-management agreement" (*samoupravni sporazum*, hereafter "the founding agreement") concluded on 8 July 1986 between several companies (at the time called "organisations of associated labour"). One of the parties to the agreement, company Textil, contributed, as a founder, some eleven billion Yugoslav dinars (hereafter "the establishment sum").

9. It appears that on 24 June 1992 Textil notified the applicant bank of the termination of the above agreement and requested repayment of the establishment sum. As the applicant bank refused to repay, in 1992 Textil brought a civil action in the Zagreb Commercial Court (*Trgovački sud u Zagrebu*) seeking the refund, plus statutory default interest (*zakonska zatezna kamata*). The applicant bank replied that during its transformation into a joint stock company in November 1989 it had made the plaintiff its shareholder and assigned to it a certain number of shares corresponding to the establishment sum.

10. On 7 June 1995 the court delivered a judgment (hereafter "the original judgment"), ruling for the plaintiff. It ordered the applicant bank to pay the plaintiff the principal amount of 1,100 Croatian kunas (HRK) plus statutory default interest. The operative part of that judgment read as follows:

> "I. The defendant ZAGREBAČKA BANKA d.d., Zagreb, Paromlinska 2, is ordered to pay the plaintiff TEXTIL import-export d.d. from Zagreb, Šoštarićeva 10, the amount of HRK 1,100 plus statutory default interest in accordance with the applicable regulations stipulating the interest rate and the Interest Rate Act, accruable from 15 September 1986 until the date of payment, as well as the costs of the proceedings in the amount of HRK 900, all within eight days.
>
> II. The alternative claim, for 12,272 shares with the pertaining outstanding dividends, is dismissed."

11. The court held that the applicant bank had not been entitled to transform the funds received into shares without Textil's consent. Thus, Textil had been entitled to terminate the 1986 agreement and request repayment. The applicant bank appealed.

12. On 31 October 1995 the High Commercial Court (*Visoki trgovački sud Republike Hrvatske*) dismissed the appeal and upheld the first-instance

judgment, endorsing the reasons given therein. The original judgment thus became final.

13. It appears that the applicant bank did not attempt to lodge an appeal on points of law (*revizija*) with the Supreme Court against the second-instance judgment, nor did it lodge a constitutional complaint with the Constitutional Court.

2. Proceedings following the applicant bank's petition for reopening

14. On 5 January 2000 the applicant bank filed a petition for reopening of the proceedings with the Zagreb Commercial Court, seeking to have the above first- and second-instance judgments set aside. It argued that Textil had already ceased to exist as a legal entity by 15 March 1994, and therefore after that date did not have standing to sue in the above civil proceedings. In its petition the applicant bank relied on the extract from the register of commercial companies (*sudski registar*) of 6 December 1999 according to which Textil had been deleted from that register on 15 March 1994 following its incorporation into company Turist Trip d.o.o.

15. On 13 April 2004 the Zagreb Commercial Court allowed the applicant bank's petition and set aside its judgment of 7 June 1995 and the judgment of the High Commercial Court of 31 October 1995.

16. Following an appeal by the plaintiff, on 22 October 2004 the High Commercial Court quashed the first-instance decision and remitted the case.

17. In the resumed proceedings, on 8 February 2006 the Zagreb Commercial Court declared the applicant bank's petition for reopening inadmissible as belated. In particular, the court established that the applicant bank had already become aware of the facts on which it had based its petition for reopening by 23 December 1998, whereas it had filed that petition on 5 January 2000, that is, outside the statutory time-limit of thirty days. In the absence of appeals that decision became final on 27 February 2006.

B. Assignment contract of 18 December 1995

18. Meanwhile, on 18 December 1995 Textil, as the original judgment's creditor, concluded an assignment contract (*ugovor o cesiji*) by which it assigned its claim against the applicant bank to company Texhol d.o.o. The signatures of the directors of the two companies on the assignment contract were certified by a notary public. The majority stockholder of Textil and the sole shareholder of Texhol (as well as of Turist Trip) was a certain Mr A.K.

19. The applicant bank disputed the validity of that assignment contract, claiming that on 15 March 1994 Textil had ceased to exist as a legal entity following its incorporation into Turist Trip company (see paragraph 14 above). On 4 May 1998 it instituted separate civil proceedings for that contract to be declared non-existent, and eventually, on 16 October 2007, obtained a final judgment in its favour (see paragraphs 88-94 below).

C. Enforcement proceedings

20. In the meantime, on 15 January 1996 Texhol applied to the Zagreb Commercial Court for enforcement of the original judgment.

21. On 26 January 1996 that court issued a writ of execution (*rješenje o izvršenju*). It ordered the financial institution operating the applicant bank's account, which was at the time the Domestic Payment Transfer Agency (*Zavod za platni promet* subsequently renamed *Financijska agencija* – hereafter "ZAP" or "FINA"), to collect the amount corresponding to the judgment debt and transfer it to Texhol's account. The writ read as follows:

> "I. The debtor is ordered to pay the creditor's claim in the amount of HRK 1,100 plus statutory default interest in accordance with the applicable regulations stipulating the interest rate and the Interest Rate Act, accruable from 15 September 1986 until the date of payment, as well as the costs of the [civil] proceedings in the amount of HRK 900.
>
> II. The debtor is ordered to reimburse the creditor the costs of these [enforcement] proceedings, as well as to pay statutory default interest on the amount of those costs accruable from the date of the issuance of the writ of execution until satisfaction of the creditor following the service of the writ.
>
> III. In order to satisfy the creditor's claim referred to under paragraph I. of this writ of execution
>
> **t h e e n f o r c e m e n t i s a l l o w e d**
>
> to the debit of the account of the debtor ZAGREBAČKA BANKA d.d. held with ZAP Zagreb, giro account no. [...], and to the credit of the creditor TEXHOL, giro account no. [...] held [also] with ZAP Zagreb, and in accordance with the assignment agreement between TEXTIL import-export d.d. and TEXHOL d.o.o. of 18 December 1995.
>
> ZAP is ordered to carry out this writ by transferring the funds from the debtor's giro account no. [...] with ZAP Zagreb to the creditor's giro account no. [...] with ZAP Zagreb.
>
> Should there be no funds in the debtor's giro account, ZAP shall freeze the account and effect the payment as soon as funds are available."

22. On 31 January 1996 the applicant bank objected (*prigovor*) to the writ. In its objection the applicant bank disputed the validity of the assignment contract between Textil and Texhol of 18 December 1995, claiming that on 15 March 1994 Textil had ceased to exist as a legal entity following its incorporation into company Turist Trip d.o.o. (see paragraph 19 above). As the writ of execution was not based solely on the original judgment as the enforcement title (*izvršna isprava*), but also on the assignment contract designated as the supplementary enforcement title (*dopunska izvršna isprava*), the applicant bank argued that Texhol was not entitled to seek enforcement of the original judgment.

23. On 8 February 1996 the Zagreb Commercial Court dismissed the applicant bank's objection. Relying on section 22(1) of the Enforcement Proceedings Act, the court held that because the assignment contract had been certified by a notary public the applicant bank's argument that the

judgment debt had not been validly transferred to Texhol could not be accepted until proven otherwise by a final court judgment (see paragraph 146 below). The applicant bank appealed against that decision.

24. On 12 March 1996 the High Commercial Court dismissed the applicant bank's appeal and upheld the first-instance decision, endorsing the reasons given therein.

25. The calculation of statutory default interest on the principal amount of HRK 1,100 made by ZAP in the execution of the writ gave a total amount of HRK 5,416,078.56. On 12 February 1996 ZAP seized that amount from the applicant bank's account and transferred it to Texhol's account.

26. On an unspecified date in February 1996 Texhol's advocate wrote to ZAP complaining that the interest for the period between 9 December 1988 and 6 October 1989 had been calculated incorrectly because the "revaluation interest" had not been taken into consideration.

27. In its reply of 26 February 1996 ZAP responded that the interest had been calculated correctly. It explained:

> "In your complaint you requested the application of another type of interest, namely revaluation interest, the rate of which is different from statutory interest, and which was not expressly stipulated in the writ of execution, so we cannot calculate it."

1. Continuation of the enforcement: first attempt

28. On 6 March 1996 Texhol applied to the Commercial Court, asking it to continue the enforcement because ZAP had miscalculated the amount of statutory default interest due. Texhol argued that ZAP had used the simple instead of the compound method and that it had not taken "revaluation interest" into account.

29. On 9 June 1997 the court issued a decision ruling for Texhol. It ordered ZAP to recalculate the statutory default interest by taking revaluation interest into consideration and by using the compound method, and thereafter to satisfy the remainder of Texhol's claim. The applicant bank appealed, arguing that it had not been informed of Texhol's application to continue the enforcement nor of the resultant decision of the Commercial Court.

30. On 23 December 1997 a panel of the High Commercial Court, composed of judges Z.J., R.S. and L.Ć., dismissed the appeal and upheld the first-instance decision. On 9 March 1998 the State Attorney lodged a request for protection of legality (*zahtjev za zaštitu zakonitosti*) to the Supreme Court against the second-instance decision.

31. On 9 September 1998 the Supreme Court allowed the request, quashed the lower courts' decisions for procedural errors, and remitted the case to the first-instance court. It held that the principle of adversarial hearing had been breached because the applicant bank had not been given the opportunity to comment on Texhol's application to continue the enforcement. It also instructed the lower courts to establish the type of statutory default interest (depending whether the founding agreement

constituted a contract of a commercial or non-commercial nature) as well as its rate and method of calculation (simple or compound) in the resumed proceedings. The relevant part of that decision read as follows:

> "The enforcement court should have decided on the amount of interest claimed, that is, on the type of the statutory default interest, the rate and the method of calculation of the statutory default interest.
>
> ...
>
> Texhol do.o. is entitled to conduct the enforcement proceedings, which follows from the enclosed written assignment contract in which the signatures of the parties were certified by a notary public. [T]that document is a document certified in accordance with the law within the meaning of section 22 of the Enforcement Procedure Act, which entitles the assignee to [act as an enforcement creditor in] the enforcement proceedings ...
>
> Until the entry into force of the [1989] Amendments to the Obligations Act, which entered into force on 7 October 1989, the default interest rate accruable on claims arising from the [legal] relationships between persons performing an economic activity was prescribed by decisions on the statutory default interest rate, pursuant to section 277(2) of the Obligations Act, whereas the [statutory default] interest rate on other claims for payment of a sum of money was determined by inter-bank self-management agreements, pursuant to section 277(1) of the Obligations Act.
>
> In the resumed proceedings it is necessary for the court to decide on the type of default interest up to 7 October 1989, taking into account the [legal] relationship between the parties, because the type of statutory default interest was not specified in the enforcement proceedings, then on the rate of the statutory default interest from 15 September 1986 onwards, as well as on the method of calculation of the default interest."

2. Continuation of the enforcement: second attempt

32. On 28 September 1999 Texhol d.o.o. was renamed Retag d.o.o.

33. In the resumed proceedings, on 5 November 1999 the Commercial Court decided to obtain the opinion of a financial expert, and on 12 November 1999 instructed the expert to calculate the statutory default interest, bearing in mind that, in the court's view, the founding agreement was to be qualified as commercial.

34. On 11 January 2000 the court delivered a decision ordering ZAP to transfer from the applicant bank's account the remaining amount of the creditor's claim of HRK 263,077,597.48 plus statutory default interest accruable from 24 November 1999 until payment. The court dismissed the applicant bank's arguments that the creditor's claim had already been satisfied in full on 12 February 1996 and that the assignment contract of 18 December 1995 was not valid.

35. On 14 February 2000 the applicant bank appealed against that decision to the High Commercial Court, at the same time asking for the enforcement to be postponed. Three days later the applicant bank submitted a motion for judges Z.J., R.S. and L.Ć. to withdraw, because they had sat in the panel of that court which, on 23 December 1997, had dismissed its previous appeal (see paragraph 30 above). It also requested withdrawal of

the High Commercial Court's president N.Š. On 19 April 2000 the Supreme Court dismissed the applicant bank's motion for withdrawal of the High Commercial Court's president, N.Š., whereupon, on 2 May 2000, he dismissed the motion for withdrawal of judges Z.J., R.S. and L.Ć.

36. In addition, on 6 March 2000 the applicant bank lodged a constitutional complaint against the first-instance decision of 11 January 2000, at the same time asking the Constitutional Court to issue an interim measure that would postpone the enforcement.

37. On 3 March 2000 the Commercial Court allowed the applicant bank's motion and postponed the enforcement. However, on 16 May 2000 a panel of the High Commercial Court, composed of judges Z.J., N.Š. and R.S., allowed Retag's appeal and reversed the first-instance decision by dismissing the applicant bank's motion for postponement.

38. On the same day the same panel of the High Commercial Court also dismissed the applicant bank's appeal against the Commercial Court's decision of 11 January 2000 (see paragraphs 34-35 above).

39. On 23 May 2000 the applicant bank lodged a constitutional complaint against that second-instance decision, alleging violations of its constitutional rights to appeal, fair hearing, equality before the law and of ownership.

40. On the same day the Constitutional Court allowed the motion for an interim measure submitted on 6 March 2000 and postponed the enforcement until it had decided on the applicant bank's constitutional complaint of 23 May 2000.

41. On 13 December 2000 the Constitutional Court allowed that constitutional complaint and quashed the decision of the Zagreb Commercial Court of 11 January 2000 (see paragraph 34 above) and the decision of the High Commercial Court of 16 May 2000 (see paragraph 38 above). It found violations of the applicant bank's constitutional rights to appeal, fair hearing and equality before the law, but not of its constitutional right of ownership. The case was remitted to the Zagreb Commercial Court for the second time.

3. Continuation of the enforcement: third attempt

(a) The proceedings leading to the decision of 3 October 2003 and the subsequent remedies

42. In the resumed proceedings, on 10 July 2003 the Zagreb Commercial Court issued an instruction (*zaključak*) inviting the parties to lodge written submissions. By another instruction, of 1 September 2003, the court forwarded Retag's submissions of 23 July 2003 to the applicant bank and scheduled a hearing for 23 September 2003. The applicant bank submitted that these instructions were never served on it and that consequently neither of its two representatives in the proceedings (a corporate lawyer and an advocate) attended the hearing.

43. The hearing was nevertheless held as scheduled, in their absence. The judge appointed to hear the case noted in the record of the hearing that receipt of the letter containing summons for the applicant bank's corporate lawyer I.T. had not been acknowledged, whereas the same letter sent to the applicant bank's advocate D.J. had been returned with an "out of office" stamp. The judge also recorded in the record that the day before the hearing he had telephoned the advocate's office and left a message with an employee that the hearing was scheduled for the following day.

44. On 3 October 2003 the Commercial Court issued a decision, the relevant part of which read as follows:

> "III. On the basis of a ... decision of this court. ... of 26 January 1996 ... the Croatian National Bank is ordered to calculate the creditor's claim in the amount of HRK 1,100, together with the following interest:
>
> - for the period from 15 September 1986 to 6 October 1989, interest at the rate [usually] paid at the place of performance on time savings deposits with no established purpose and with a term longer than one year, pursuant to section 277(1) of the Obligations Act;
>
> IV. When calculating the interest the Croatian National Bank is required to deduct from the sum arrived at on 12 February 1996 the amount of HRK 5,416,078 ...
>
> V. The remaining amount shall be seized by the Croatian National Bank without delay from the debtor's account no. [...], held with the Croatian National Bank, and paid into the account of the creditor no. [...], held with Karlovačka banka d.d., and shall inform the court thereof."

45. In deciding the above the court took into consideration the creditor's written pleadings of 25 July 2003, as well as the written pleadings of the applicant bank of 26 September 2003. It stressed that the issue of which interest rate was to be applied was of a legal rather than a technical nature. It qualified the founding agreement as a non-commercial contract, thereby effectively sidestepping the contestation as to the applicability of "revaluation interest" (see paragraphs 26-29 above), because that interest could only potentially be applied to claims arising out of commercial contracts. However, the court did not indicate the exact rate to be applied, but merely stated that it was the "interest at the rate paid at the place of performance on time savings deposits with no established purpose and with a term longer than one year" (*kamatu po stopi koja se u mjestu ispunjenja plaća na štedne uloge oročene bez utvrđene namjene preko godinu dana*). Nor did the court indicate the method of calculation of statutory default interest (simple or compound). Nonetheless, the court stated that in the period between 15 September 1986 and 6 October 1989 the statutory default interest rate stipulated in section 277(1) of the 1978 Obligations Act as in force at that period (see paragraph 126 below) had been calculated pursuant to the Inter-Bank Interest Rate Policy Self-Management Agreement (see paragraphs 133-137 below).

46. On 14 October 2003 the applicant bank appealed to the High Commercial Court against that decision, asking at the same time for its execution to be postponed. In requesting postponement of enforcement the

applicant bank argued that Retag's claim against it had been extinguished by offsetting (*prijeboj*) the applicant bank's claim against Textil for payment of HRK 14,921,617.82, together with interest on that amount calculated from 1 March 1993. It explained that over a number of years it had lent substantial sums of money to Textil, which had later been unable to repay those loans. Given that Textil had been incorporated into Turist Trip company on 15 March 1994, and that it had, on 18 December 1995, assigned the claim against the applicant bank to Texhol (later named Retag), the applicant bank had been entitled to offset its claim against Textil with Retag's claim against the applicant bank, pursuant to section 440(2) of the 1978 Obligations Act, which entitled the debtor in the event of assignment to offset its debt against a claim existing at the time of assignment against either the assignor or the assignee (see paragraph 130 below). The applicant bank also requested that judges R.S., Z.J. and L.Ć., as well as the President of the High Commercial Court, N.Š., withdraw. In so doing the applicant bank merely stated that those judges had previously been involved in decision-making in the case, and that it had lodged several criminal complaints against them, which had not been decided on to that date. For that reason the applicant bank argued that it had cause to doubt their impartiality.

47. Retag, for its part, also appealed against the first-instance decision of 3 October 2003, insisting on the application of "revaluation interest" and the compound method.

48. On 13 October 2003 the applicant bank also lodged, and on 14 and 29 October 2003 supplemented, a constitutional complaint against the first-instance decision, asking at the same time for postponement of enforcement.

49. On 27 October 2003 the Zagreb Commercial Court dismissed the applicant bank's motion of 14 October 2003 for postponement of enforcement (see paragraph 46 above). At the same time the court also instructed the applicant bank to institute separate civil proceedings for the enforcement to be declared inadmissible (*parnica za proglašenje ovrhe nedopuštenom*), given that in its appeal of the same date the applicant bank argued, *inter alia*, that the continuation of enforcement of the original judgment was inadmissible because Retag's claim against it had been extinguished by the offset of its claim against Retag. The applicant bank instituted those proceedings on 11 November 2003 (see paragraphs 113-116 below). The relevant part of that decision reads as follows:

> "The motion for postponement of enforcement is based on the [enforcement] debtor's argument that the [enforcement] creditor's claim was extinguished by an offset, which does not constitute a ground for postponing the enforcement.
>
> Moreover, the [enforcement] debtor's mere contention that it has a larger claim against the [enforcement] creditor does not constitute significant damage, as has been established by the case-law of the [domestic] courts.
>
> Apart from the fact that the [enforcement] creditor's claim is based on an enforcement title, whereas the [enforcement] debtor does not possess any decision in

its favour, it has to be noted that the [enforcement] debtor could have relied on such a defence earlier, during the [principal] civil proceedings.

In this court's view, no one should benefit from evident abuse of process during proceedings. Therefore, the motion for postponement of enforcement must be dismissed."

50. On 8 December 2003 the President of the Commercial Court declared the applicant bank's motion for withdrawal of judges N.Š., R.S., Z.J. and L.Ć. of 14 October 2003 inadmissible (see paragraph 46 above). In so doing she relied on section 73 of the Civil Procedure Act (according to which once a court has decided on a motion for withdrawal, any subsequent motions for withdrawal of the same judges in the same proceedings are to be declared inadmissible, see paragraph 145 below), and the fact that earlier in the same proceedings, on 19 April 2000, the Supreme Court had already dismissed a motion for withdrawal of Judge N.Š, and on 2 May 2000 the High Commercial Court had dismissed a motion for withdrawal of judges R.S., Z.J. and L.Ć (see paragraph 35 above).

51. On 6 April 2004 the High Commercial Court, sitting in a panel composed of judges Z.M., R.S. and K.M., dismissed appeals against the first-instance decision of 3 October 2003, endorsing the reasons given therein. It also dismissed the applicant bank's appeal against the first-instance decision of 27 October 2003 refusing its motion for postponement of enforcement. It held as follows:

"As a ground for postponement of enforcement the [enforcement] debtor states that it intends to lodge an appeal. However, no valid grounds for postponement of enforcement are discernible from the appeal ...

As regards the argument in the appeal concerning the lack of capacity to act as the [enforcement] creditor, the court finds that [Retag] is entitled to act in that capacity on the basis of the assignment contract [of 18 December 1995] until proven otherwise by a final judgment. ... [T]he case file contains a written assignment contract with the parties' signatures, certified by a notary public. [T]hat document is a deed certified in accordance with the law within the meaning of section 22 of the Enforcement Procedure Act, which entitles the assignee to act [as the enforcement creditor] in the enforcement proceedings. [Since] enforcement proceedings are strictly formal, this court has full confidence in the certified notarial deed ...

It has to be noted that the first-instance court correctly found that the enforcement debtor had received from the enforcement creditor's predecessor a sum which represented the equivalent of 56 million German marks, had used it from 1986 until the present day, and had refused to return it despite the final court judgments. Furthermore, the enforcement debtor claims that the payment of HRK 5,416,078, which represents about 3% of the value of the principal debt on the day the debt became due, had settled the debt in full.

During these enforcement proceedings seven first-instance decisions were rendered postponing enforcement in this case, as well as eleven decisions on motions for withdrawal of certain judges of the Commercial Court, the High Commercial Court and the Supreme Court.

The case file contains six decisions of the High Commercial Court, two decisions of the Supreme Court [and] two decisions of the Constitutional Court, neither of which

concerns motions for withdrawal of judges. Despite all this the enforcement creditor has not managed to satisfy its claim [endorsed by a final court judgment].

It follows from all of the above that the enforcement debtor's appeal is ill-founded and thus must be dismissed ..."

52. On 2 June 2004 the applicant bank lodged a constitutional complaint against that decision, alleging violations of its constitutional rights to appeal, fair hearing and equality before the law.

53. In addition, on 14 June 2004 the State Attorney lodged a request for protection of legality against the same decision.

54. On 4 October 2004 the Commercial Court declared the State Attorney's request inadmissible, finding that such a remedy no longer existed under the relevant legislation. On 18 January 2005 the High Commercial Court dismissed an appeal by the State Attorney and upheld the first-instance decision.

55. On 7 July 2005 the Constitutional Court declared the applicant bank's constitutional complaint inadmissible, finding that the decision complained of was unrelated to the merits of the case.

(b) The proceedings leading to the instruction of 28 October 2003 and the subsequent remedies

56. Meanwhile, on 14 October 2003 the Croatian National Bank wrote to the Commercial Court explaining that it was unable to calculate the statutory default interest as indicated in that court's decision of 3 October 2003 (see paragraphs 44-45 above) because it did not have the necessary information about interest rates on time savings deposits or the text of the Inter-Bank Interest Rate Policy Self-Management Agreement referred to in that decision. However, it had asked several banks to provide that information and notified the court that it would proceed with the execution of the court's decision as soon as it had received the necessary data. The applicant bank submits that that letter was never served on it.

57. On 16 and 20 October 2003 Retag asked the Commercial Court to expedite the proceedings and informed it that the Croatian National Bank had not yet transferred the funds from the applicant bank's account.

58. On an unspecified date in October 2003 the judge of the Commercial Court appointed to hear the case wrote to ZAP (which had in the meantime been renamed the Financial Agency, or FINA) informing it of the Croatian National Bank's inability to calculate the statutory default interest owing to the lack of necessary information concerning interest rates on time savings deposits. It requested FINA to provide that information and to calculate the statutory default interest as indicated in the Commercial Court's decision of 3 October 2003.

59. On 27 October 2003 FINA made the calculation as requested and forwarded it to the Commercial Court. The calculation suggests that the simple interest method was used to calculate the statutory default interest in the period between 10 August 1986 and 31 December 1987, whereas the compound interest method was used in the period between 1 January 1988

and 27 October 2003. The amount was therefore determined at HRK 165,167,676.75.

60. The applicant bank submits that neither the Commercial Court's request nor FINA's calculation were ever served on it.

61. On 28 October 2003 the Commercial Court issued an instruction to the Croatian National Bank to transfer, pursuant to FINA's calculation, the amount of HRK 165,167,676.75 from the applicant bank's account to Retag's account. The instruction was served on the applicant bank on 24 November 2003.

62. On 22 December 2003 the Croatian National Bank transferred the sum of HRK 168,618,419.60 pursuant to the instruction (the difference between the sum indicated in the instruction of 28 October 2003 and the sum transferred on 22 December 2003 is due to the accrued statutory default interest in the period between the date the instruction was issued and the date the sum was transferred).

63. On 2 December 2003 the applicant bank appealed against the instruction of 28 October 2003 to the High Commercial Court notwithstanding the fact that no appeal was available against such a decision under Croatian law (see section 8(7) of the 1978 Enforcement Procedure Act in paragraph 146 below). It appears that no formal decision (to declare it inadmissible) has ever been taken on that appeal. At the same time it again asked for postponement of enforcement and withdrawal of judges N.Š., R.S., Z.J. and L.Ć.

64. On 24 November 2003 the applicant bank also lodged, and on 2 and 18 December 2003 supplemented, a constitutional complaint against the instruction, asking at the same time for its enforcement to be postponed. On 14 April 2004 the Constitutional Court declared that complaint inadmissible, holding that the contested decision was unrelated to the merits of the case.

65. On 28 August 2008 the Zagreb Commercial Court issued a decision to discontinue the enforcement proceedings, given that the enforcement was completed and that Retag as the enforcement creditor had on 12 December 2007 ceased to exist as a legal entity (see paragraph 87 below).

66. Following an appeal by "the bankruptcy estate of Retag" (see paragraphs 87 and 155-156 below), on 14 October 2008 the High Commercial Court quashed the first-instance decision and instructed the lower court to stay the enforcement proceedings pursuant to section 212(4) of the Civil Procedure Act (see paragraph 145 below).

(c) Statements to the media by Judge N.Š.

67. Meanwhile, on 6 November 2003 N.Š., a High Commercial Court, judge and its president in the period between 6 March 1995 and 6 March 2002, had been quoted in a newspaper article published by the daily *Novi list* in which he had made certain comments that, in the applicant bank's view, were injudicious and hostile. The article, featuring a photo of Judge N.Š. and entitled '[*N.Š*]*:* ZABA has to pay at least 28 million euros

pursuant to the writ of execution', the relevant part of which read as follows:

> "'*The principal debt of 56 million German marks (28 million euros) is indisputable – the question is only how the interest should be calculated*', explains the former President and now judge of the High Commercial Court of the Republic of Croatia [N.Š.], against whom Zagrebačka banka has already brought criminal charges in 2001 in which it attempted to prove that [he] had abused his judicial authority in a case that may bring the bank to its knees due to enormous default interest accrued as a result of 11 years of court proceedings.
>
> ...
>
> [N.Š.] however emphasises that the bank could have pre-empted all of this if it had [re]acted in time: '*Enforcement has already been ordered three times, and each time the matter has been deliberately blurred by the amounts of principal debt and interest [being incorrect]. As far as I know, [the first-instance judge appointed to hear the case] last ordered the enforcement in the amount of 187 million kunas, whereas FINA calculated an amount several times higher due to the application of what is called the compound method of calculating interest. The bank itself calculates interest for its debtors in the same manner it complains against. I neither know, nor have I seen, let alone am connected to, the people from Textil. I have personally brought charges against an 'anonymous person' in Zaba. If the allegations in the criminal complaints [against me] were true, I can assure you that the State Attorney's Office would have taken action against me*', Š. argues."

68. On 24 March 2006 Judge N.Š. participated in the television programme 'Kontraplan' broadcast by Croatian Television. The relevant part of that programme was as follows:

> "**Narrator**: Banks are bigger mafia than small and big criminal organisations, said N.Š., judge and former president, after failing to be elected President of the High Commercial Court. As well as banks, N.Š. has also assailed the State Attorney's Office, judges of the Supreme Court and politicians. He has accused J.C. of favouring his son I.C., who after having been an advocate of Zagrebačka banka, became the President of the Supreme Court. He has accused S.L. of putting pressure on the Court together with bankers, and B.G. of tearing up a Commercial Court judgment. In addition, N.Š. suspects State Attorney M.B. of keeping judges obedient by not dealing with numerous criminal complaints against them.
>
> **D.M. (host)**: N.Š.'s frontal attack on the pillars of Croatian banking, as well as the judicial and political system, has raised several important issues. Should one trust [his] thesis that the Croatian economy is a hostage to corrupt lobbies? Are the answers given by those mentioned convincing, and which institutions in Croatia are going to assess them? Are N.Š.'s accusations confirmation to Eurocrats that Croatia really has a corrupt judiciary? Is it all about a play of the untouchables, in which no one is going to face the consequences? Tonight's guest on 'Kontraplan' is: Judge N.Š., who is in his office in the High Commercial Court. Good evening, Mr Š.
>
> ...
>
> **D.M.**: Most of the public has perceived N.Š.'s reactions and accusations as revenge for not being elected President of the High Commercial Court. One of those mentioned, a former president of the Constitutional Court, who has been accused by N.Š. of favouring one party in the case of Zagrebačka banka versus Retag, shares this opinion.
>
> **J.C. (former Constitutional Court President)**: Everything said about Zagrebačka banka is totally untrue. I had a rule, and this was also a rule at the Constitutional

Court, under which we always removed ourselves from every case in which a relative or someone else [connected with us] appeared in any role, such as that of an advocate. For example, my son was also a judge in the Supreme Court. Nevertheless these rulings also came to us and we always and in each case of this kind removed ourselves. No offence, but I think this is just dirt and one can only be disgusted by it. One can see this only as the cry of a desperate man who has failed in something, for example, here in becoming the President of the High Commercial Court, and who thinks he can entangle people and involve them among those he has probably worked with.

D.M.: Mr Š., why does everybody, or most of the people, especially those who have been invited here, see your acts, that is your attacks, as the act of a desperate man who has lost all chance of getting a better position in the judiciary?

N.Š. (judge of the High Commercial Court): Well, I would not look at it in that way.

D.M.: I understand that.

N.Š.: Right at the beginning I would like to say that I was trying to talk about these issues while I was the president of the Court, however ...

...

D.M.: I am sorry but what did you say? What did you try to draw attention to in these public appearances?

N.Š. : I was trying to draw attention to the fact, and that was my point all along, that there is no independent judiciary, that the executive authority influenced it strongly; different lobbies influenced the operation of the courts. It was pretty obvious. I have written about it even today.

...

D.M.: ... I would like to go back now to the main case, for which Mr N.Š. has also been attacked very often, and that is the Retag versus Zagrebačka banka case or the 169,000,000 kunas enforcement. In tomorrow's *Večernji list*, Mr N.Š., with reference to you, the newspaper claims that father and son [J. and I.] C. saved Zagrebačka banka from enforcement in the Retag case in one day. Allegedly, it happened on 23 May 2000 ... Why did you find this case interesting? Was it, perhaps, evidence of an efficient judiciary and a good advocate?

N.Š.: Well, a good advocate was also important, but the problem was the fact that Zagrebačka banka lost this case. It lost it at all levels, not only at the High Commercial Court, but also at the Supreme Court. Therefore, it [i.e. the bank] had to execute it [i.e. the judgment]. However, [the director of Zagrebačka banka] Mr P.L. and Zagrebačka banka [itself] did not want that. Enforcement commenced which lasted about eleven years; it was the longest enforcement in our history. At the same time, Zagrebačka banka did not want to abide by the decision in any way and tried not to do so, which was its legal right, but ...

...

N.Š.: ...You see, Zagrebačka banka, for example, has calculated such interests to its depositors, debtors, customers, which it did not want to pay to its creditor. Therefore, two types of criteria [i.e. double standards] were applied here. One type of criteria was used when I was a creditor and the other when it was someone else. In addition to this, I would like to say one more thing.

D.M.: Of course.

N.Š.: In addition to this, through fiduciary contracts and security instruments for a debt in the amount of 100 kunas, for example, Zagrebačka banka used to take properties, the value of which was well above this amount. Therefore, we cannot say now that it was impeccable and that it did not take a significant part of the GDP in this way

...

N.Š.: First of all, ... I would like to say that I have never acted as judge in this case – so that you can get me right. I was only the president of the court and they have attacked me. Zagrebačka banka has attacked me according to the command responsibility, I guess, because I could have, they believe, influenced it.

D.M.: But, Mr N.Š., I have to interrupt, in tomorrow's *Večernji list* you have attacked the relationship between J. and I.C, although, for example, J.C. was no longer at the [Constitutional Court] at the time of the one-day postponement of enforcement. He was retired. Therefore, you, too, have to accept some things as a criterion. As the court president you could probably have influenced these things?

N.Š.: Well, I could [to] some [extent]. For example, as president I could talk to a judge to speed something up or not. You have to know that the whole system of commercial courts is complex, that there are, you know it yourself, many courts. Even I cannot know them all. Therefore, I cannot or could not know what was happening at a particular court. So, when it comes to that, I did get some information that I could not have influenced. When it comes to the relationship between Zagrebačka banka and courts, for example, the best example is the fact that Zagebačka banka has won 85% of its cases ...

...

D.M.: All right. Mr N.Š., let us go back to the Retag case. You have often been reproached for a connection with B.P., that is, with the man who has been connected with what has been called a 'big criminal organisation'. What is your relationship with him? Does this have anything to do with the fact that you have awarded enforcement in the amount of 169,000,000 kunas to Retag?

N.Š.: Well, I have been constantly attacked. Allegedly, I have connections with B.P., then H.P., then ... I have served as a judge for thirty years. For thirty years I have been working in this commercial judiciary sector. I know a great many people. This is how I know B.P. and H.P. I know [the director of Zagrebačka banka] P.L., [the director of Privredna banka] B.P. and so many others, as well. Therefore, these are insinuations used only to exert pressure on the court, so that the court does not issue a ruling in favour of, that is, against ...

...

D.M.: All right... one more question. In tomorrow's *Večernji list* it is stated, Mr N.Š., that you said, if this is true, you can deny it later, that you knew B.P., about whom we have talked, as a nephew of one of the judges of the High Commercial Court. Is this correct?

N.Š.: Who are you asking [that question]?

D.M.: You, Mr N.Š. So, is it true that you know B.P. as a nephew of one of the High Commercial Court judges?

N.Š.: Yes, I do ...

D.M.: What is the name of the judge?

N.Š.: Judge M., K.M.

D.M.: Has he ever decided in any of these court proceedings?

N.Š.: Never. As far as I know in none of them."

D. Bankruptcy proceedings against Retag

69. Meanwhile, on 21 June 2000 the Karlovac Commercial Court (*Trgovački sud u Karlovcu*) decided to open bankruptcy proceedings against Retag. By the same decision the court appointed a bankruptcy administrator and invited Retag's creditors to report their higher-ranking claims to him within twenty days of publication of the decision to open bankruptcy proceedings in the Official Gazette. The notice was published in the Official Gazette of 7 July 2000.

70. On 21 July 2000 the applicant bank, as a bankruptcy creditor (*stečajni vjerovnik*) reported to the bankruptcy administrator the claim against Retag of HRK 11,422,427.08 as a higher-ranking claim, which corresponds to the amount seized from it in the enforcement proceedings on 12 February 1996 (HRK 5,416,078.56) and the statutory default interest accrued on that amount up to the date of the opening of the bankruptcy proceedings (HRK 6,006,348.52).

71. At the verification hearing (*ispitno ročište*) held on 30 November 2001 the bankruptcy administrator contested that claim. The court therefore instructed the applicant bank to resume the civil proceedings it had instituted on 4 May 1998, in order to establish whether the claim was well-founded (see paragraphs 19 and 88-94 below).

72. On 22 February 2004 the bankruptcy administrator prepared the final distribution list (*završni diobni popis*).

73. By a decision of 12 March 2004 the bankruptcy judge approved the final distribution and scheduled the final (distribution) hearing (*završno ročište*) for 15 April 2004. The decision was published in the Official Gazette of 24 March 2004.

74. On 15 April 2004 the court held the final hearing to review the final distribution list. The applicant bank lodged an objection (*prigovor*) to the list, stating that unjust enrichment of the bankruptcy estate had occurred in the amount seized from it in the enforcement proceedings on 22 December 2003, and that a number of proceedings to contest the enforcement were still ongoing. The bankruptcy judge dismissed the applicant bank's objection. However, that decision was subsequently quashed by the High Commercial Court and the case was remitted.

75. In the resumed proceedings, on 13 September 2004 the bankruptcy judge of the Karlovac Commercial Court issued a decision inviting Retag's creditors to report their lower-ranking claims to the bankruptcy administrator within fifteen days of publication of the decision in the Official Gazette. The decision was published in the Official Gazette of 24 September 2004.

76. On 19 September 2004 the sole shareholder of Retag (who was also the sole shareholder of Turist Trip and the major stockholder of Textil), Mr A.K., died.

77. At the verification hearing for the lower-ranking claims held on 29 October 2004 the applicant bank, as a bankruptcy creditor, reported to the bankruptcy administrator two lower-ranking claims against Retag: (1) for payment of HRK 8,156,264.47, which corresponds to the statutory default interest on the amount seized from it in the enforcement proceedings on 12 February 1996, accrued in the period between the date of the opening of the bankruptcy proceedings and the date the claim was reported, and (2) for payment of HRK 610,610, corresponding to the costs of the bankruptcy proceedings incurred by the bank.

78. By a decision of 23 November 2004 the bankruptcy judge approved the new final distribution list, prepared by the bankruptcy administrator on 22 November 2004, and scheduled the final hearing for 23 December 2004. That decision was published in the Official Gazette of 1 December 2004.

79. On 22 December 2004 the applicant bank informed the bankruptcy administrator and the bankruptcy judge that it had on the same day brought a civil action for unjust enrichment against Retag in the Karlovac Commercial Court, seeking restitution of the HRK 168,618,419.60 (see paragraph 106 below) which had been seized from it a year ago and transferred to Retag's account in the enforcement proceedings.

80. On 23 December 2004 the applicant bank raised an objection to the final distribution list. The applicant bank explained that it had a claim against the bankruptcy debtor for restitution of HRK 168,618,419.60 on account of unjust enrichment and that it had instituted civil proceedings to that end. Given that the seizure of the amount in question had taken place in the enforcement proceedings on 22 December 2003, that is, after the opening of the bankruptcy proceedings against Retag on 21 June 2000, the applicant bank had become a creditor of the bankruptcy estate (*vjerovnik stečajne mase*). Under the Bankruptcy Act claims of such creditors had precedence over bankruptcy creditors (*stečajni vjerovnici*), that is, those creditors whose claims against a bankruptcy debtor had arisen before the opening of bankruptcy proceedings. The applicant bank argued that its claim was well-founded because the enforcement proceedings and the resultant seizure of the above sum had been based on the non-existent assignment contract between Textil and Texhol of 18 December 1995, the validity of which was being contested in parallel civil proceedings. That being so, the applicant bank argued that the bankruptcy administrator should have reserved an amount corresponding to its claim, pursuant to section 87a of the Bankruptcy Act (see paragraph 155 below), and deposited it in a special account pending the outcome of the civil proceedings for unjust enrichment instituted on 22 December 2004, which were expected to end in the bank's favour. Since the bankruptcy administrator had not (and, having been informed of the bank's claim a month after he had prepared the final distribution list, could not have) done so, the applicant bank invited the bankruptcy judge to set aside the measures taken so far, take steps to protect the bank's interests as a creditor of the bankruptcy estate, and fix another date for the final hearing.

81. On 23 December 2004 the bankruptcy judge of the Karlovac Commercial Court dismissed the applicant bank's objection to the final distribution list. The relevant part of that decision reads as follows:

> "At the final hearing held on 23 December 2004 the objection to the final [distribution] list was lodged by the creditor Zagrebačka banka d.d.
>
> It was argued in the objection that the final [distribution] list did not take into account other obligations of the bankruptcy estate, which had precedence over the payment of bankruptcy creditors. In particular, that it [i.e. the final distribution list] did not take into account the claim of the creditor of the bankruptcy estate Zagrebačka banka d.d. for restitution of the funds acquired by unjust enrichment in the amount of HRK 168,618,419.60, which had been seized on 22 December 2003 in enforcement proceedings I-40/96 before the Zagreb Commercial Court. Furthermore, that the decisions of the enforcement court in favour of the bankruptcy debtor were not final, that the creditor Zagrebačka banka d.d. had instituted civil proceedings P-270/03 before this court for declaring the enforcement inadmissible, that the Zagreb Commercial Court, in its decision P-4885/03 of 13 April 2004, had allowed the petition of the Zagrebačka banka d.d for reopening of proceedings, that the creditor of the bankruptcy estate Zagrebačka banka d.d had instituted civil proceedings P-91/04 before the Karlovac Commercial Court against the bankruptcy debtor with a view to having the [supplementary] enforcement title declared non-existent and to recover what had been received by unjust enrichment. Furthermore, that by final decision Kv-208/04-2 of 22 March 2004 the Zagreb County Court had issued a provisional measure prohibiting payment of the [above] amount to the accused A.K, as the only shareholder of the company Retag d.o.o.
>
> ...
>
> By a non-final decision, P-4885/03 of 13 April 2004, the Zagreb Commercial Court allowed reopening of the proceedings in that case, set aside [its] judgment P-15652/92 of 7 June 1995 and the judgment of the High Commercial Court of the Republic of Croatia Pž-3060/95 of 31 October 1995, and declared the action inadmissible.
>
> It is correct that the bankruptcy creditor Zagrebačka banka d.d,. on 23 March 2003 brought an action [for unjust enrichment] arguing that unjust enrichment of the bankruptcy estate had occurred, which constituted [an]other obligation of the bankruptcy estate, whereby the plaintiff sought to have declared non-existent and without legal effects the judgment of the Zagreb Commercial Court P-15652/92 of 7 June 1995, as well as the judgment of the High Commercial Court of the Republic of Croatia Pž-3060/95-02 of 31 October 1995, and [asked] the court to order the bankruptcy debtor to pay the plaintiff from the bankruptcy estate the amount of HRK 168,618,419.60, together with the accrued statutory default interest. That action was declared inadmissible by a final decision of this court, P-91/04-7 of 2 April 2004.
>
> In the case before this court, P-270/03, the plaintiff's action to have the continuation of enforcement ordered by the decision of the Zagreb Commercial Court, I-40/96 of 3 October 2003 ... declared inadmissible was dismissed by a non-final judgment of this court of 24 February 2004.
>
> Without calling into question the aforementioned non-final decisions (one of them was rendered in favour and two against the bankruptcy creditor Zagrebačka banka d.d), [the fact remains that] on 22 December 2003 the amount of HRK 168,618,419.60 was transferred into the account of the bankruptcy debtor pursuant to the final writ of execution, I-40/96 of 26 January 1996. The writ of execution was upheld on appeal by a decision of the High Commercial Court of the Republic Croatia, Pž-438/96 of 12 March 1998, and was not quashed or reversed by any subsequent final decision. ...

Taking that fact into account, this bankruptcy court cannot accept as well-founded the claim of the bankruptcy creditor Zagrebačka banka d.d that there had been unjust enrichment of the bankruptcy estate, and that there is [an]other obligation of the bankruptcy estate within the meaning of the fourth sub-paragraph of section 87(1) of the Bankruptcy Act, in the amount of HRK 168,618,419.60. [This is so] because the transfer of funds into the bankruptcy estate occurred on the basis of the aforementioned final writ of execution. The non-final decision I-40/96 of 8 October 2003, [only] specified the statutory default interest applicable in the case, but this does not affect the finality of the writ of execution.

Therefore, the legal basis for enrichment exists as described above. [Thus,] there was no need to reserve funds to meet other obligations of the bankruptcy estate, since under section 87a of the Bankruptcy Act, the funds are to be reserved to meet those obligations which it can legitimately be assumed would have to be settled in the future.

Since in this case it cannot legitimately be assumed that, on the basis of the unjust enrichment of the bankruptcy estate, there are other obligations of the bankruptcy estate, the bankruptcy administrator did not reserve the amount of HRK 168,618,419.60 in the final [distribution] list. [Therefore] the objection of the bankruptcy creditor Zagrebačka banka d.d to the final [distribution] list was dismissed as ill-founded."

82. On 23 March 2005 the High Commercial Court dismissed an appeal by the applicant bank and upheld the first-instance decision. The relevant part of that decision reads as follows:

"The bankruptcy judge [of the first-instance court] when examining the [applicant bank's] argument [raised] in the objection [to the final distribution list] that ... section 87a of the Bankruptcy Act have been breached ... correctly applied provisions of the Bankruptcy Act ...[T]he assessment of ... whether it could legitimately have been assumed that there existed an obligation of the bankruptcy estate on the ground of unjust enrichment to return ... the amount of HRK 168,618,419.60, was carried out on the basis of: the final decision of the Karlovac Commercial Court ... of 2 April 2004 to declare inadmissible the appellant's action seeking that the bankruptcy debtor pay the plaintiff the amount of HRK 168,618,419.60, the final writ of execution of the Zagreb Commercial Court ... of 26 January 1996 and the [final] decision on the continuation of enforcement of 3 October 2003, ... [The bankruptcy judge of the first-instance court] therefore considered that, notwithstanding the appellant's action for unjust enrichment brought on 22 December 2004 seeking to recover the amount of HRK 168,618,419.60, which is the amount paid in the enforcement proceedings, it could not legitimately be assumed that there existed ... an obligation of the bankruptcy estate on account of unjust enrichment, and that therefore the bankruptcy administrator had not reserved the amount of HRK 168,618,419.60 in the final [distribution] list. The appellant's objection was therefore dismissed.

That decision [of the bankruptcy judge of the first-instance court] is ... based on the ... assessment that, having regard to the final court decisions rendered so far and the action brought on 22 December 2004, it could not legitimately be assumed that there existed an obligation of the [bankruptcy] estate on the basis of unjust enrichment to return ... the amount 168,618,419.60, HRK, and that the bankruptcy administrator was [therefore] not obliged to reserve that amount as an obligation which it could legitimately be assumed would have to be settled in the future, in accordance with the ... section 87a of the Bankruptcy Act.

According to the case file and documentation in the file, the amount of HRK 168,618,419.60 was transferred into the account of the bankruptcy debtor on 22 December 2003 on the basis of a final writ of execution of the Zagreb Commercial

Court ... of 26 January 1996 and the final decision of 3 October 2003 on the continuation of the [enforcement] proceedings.

According to the case file and the claims of the appellant itself, it follows that the appellant brought its action, to which it refers, on 22 December 2004, which was 21 days after the publication in the Official Gazette on 1 December 2004 [of the notice] that a final hearing was to be held and the notice that according to the final distribution list all bankruptcy creditors were to be paid 100% of the amount of the acknowledged claim[s], after the service of the final list and after displaying the final statement of account in the office of the court on 13 December 2004, only a day before the final hearing. It is unclear how the bankruptcy administrator, in compiling the final [distribution] list ... could have foreseen that the appellant would again bring an action for [unjust enrichment seeking] payment of HRK 168,618,419.60 after the appellant's [previous] action [for unjust enrichment], seeking .... that the bankruptcy debtor pay the plaintiff the amount of HRK 168,618,419.60 had already been declared inadmissible on 2 April 2004 in the proceedings before the Karlovac Commercial Court. It is also unclear how, on the basis of this anticipation of a new action, the bankruptcy administrator could have legitimately assumed that the amount of the claim [sought by the action] not yet brought, would have to be settled in the future.

By the action brought on 22 December 2004 [the plaintiff] is again seeking that the amount of HRK 168,618,419.60 be paid on account of unjust enrichment of the bankruptcy estate. From the facts [adduced in support] of] of the claim it does not follow that there is a legitimate assumption that this amount would have to be paid in the future. [Therefore,] the assessment [made] by the bankruptcy judge [of the first-instance court] is correct."

83. On 5 January 2005 the bankruptcy administrator reserved the amount of HRK 41,752,238.68 for the applicant bank and deposited it on a special account pending the final outcome of the civil proceedings the applicant bank had instituted on 4 May 1998 (see paragraphs 19 and 88-94 below).

84. On 18 April 2005 the applicant bank lodged a constitutional complaint against the second-instance decision, asking at the same time for the distribution of the bankruptcy estate to be postponed. The Constitutional Court took no action on the postponement motion but on 7 July 2005 declared the applicant bank's constitutional complaint inadmissible.

85. On 15 April and 16 May 2005 the bankruptcy estate was distributed in accordance with the final distribution list. The applicant bank submitted that the creditors had received the total of HRK 4,452,789.64, whereas HRK 120,571,514.44 had been distributed to Retag's shareholders, that is to three companies set up by Mr A.K.'s statutory heirs (his widow and three children) and the testamentary heir, a Mr B.P. As noted above (see paragraph 83), the sum of HRK 41,752,238.00 was reserved for the claims of the applicant bank. After the judgment of the Karlovac Commercial Court of 5 February 2010 rendered in the civil proceedings seeking declaration of the assignment contract between Textil and Texhol of 18 December 1995 non-existent became final (see paragraphs 93-94 below), the part of that sum, amounting to HRK 14,146,718.27, was on 14 January 2013 transferred to the applicant bank's account.

86. On 29 March 2007 the Karlovac Commercial Court issued a decision closing the bankruptcy proceedings against Retag.

87. On 12 December 2007 the Karlovac Commercial Court issued a decision deleting Retag from the register of commercial companies. Retag thereby ceased to exist as a legal entity. It however continued to participate in various civil proceedings as "the bankruptcy estate of Retag" represented by its bankruptcy administrator (see paragraphs 155-156 below).

E. Other relevant proceedings

1. Civil proceedings seeking declaration of the assignment contract between Textil and Texhol of 18 December 1995 non-existent

88. Meanwhile, on 4 May 1998 the applicant bank brought a civil action against Retag in the Karlovac Commercial Court, seeking to have the assignment contract concluded on 18 December 1995 between Textil and Texhol (see paragraph 18 above) declared non-existent. The applicant bank disputed the existence of that assignment contract, claiming that on 15 March 1994 Textil had ceased to exist as a legal entity following its incorporation into company Turist Trip d.o.o. (see paragraph 19 above).

89. After the opening of the bankruptcy proceedings against Retag on 21 June 2000 the applicant bank also asked the court to establish that as a bankruptcy creditor it had against the defendant: (1) a well-founded higher-ranking claim for restitution of HRK 11,422,427.08 on account of unjust enrichment, which claim was reported in the above bankruptcy proceedings on 21 July 2001 (see paragraph 70 above), (2) two well-founded lower-ranking claims for payment of HRK 8,156,264.47 and HRK 610,610, reported in the above bankruptcy proceedings on 29 October 2004 (see paragraph 77 above).

90. On 18 January 2006 the Karlovac Commercial Court dismissed the applicant bank's action in its entirety, finding that at the relevant time Textil did exist as a legal entity.

91. Following an appeal by the applicant bank, on 16 October 2007 the High Commercial Court reversed the first-instance judgment in part and found for the applicant, declaring the assignment contract of 18 December 1995 between Textil and Texhol non-existent. It found that at the relevant time Textil no longer existed as a legal entity, following its incorporation into company Turist Trip. At the same time the High Commercial Court quashed the first-instance decision in its part dismissing the applicant bank's ensuing demands regarding validity of its claims reported in the bankruptcy proceedings, and remitted the case in that part.

92. On 15 July 2008 the Supreme Court declared inadmissible an appeal on points of law lodged against the second-instance decision by "the bankruptcy estate of Retag".

93. In the resumed proceedings, by a judgment of 5 February 2010 the Karlovac Commercial Court found for the applicant bank in part. That court established that the applicant bank, as a bankruptcy creditor had against "the bankruptcy estate of Retag": (1) a well-founded higher-ranking claim for

recovery of HRK 9,824,115.39 (instead of the HRK 11,422,427.08 sought by the applicant bank) on account of unjust enrichment, (2) two well-founded lower-ranking claims for payment of HRK 3,866,945.08 (instead of HRK 8,156,264.47 sought by the applicant bank) and HRK 455,657.80 (instead of HRK 610,610.00), reported in the above bankruptcy proceedings on 29 October 2004. The claim for recovery of 9,824,115.39 corresponds to the amount seized from the applicant bank in the enforcement proceedings on 12 February 1996 (HRK 5,416,078.56) and the statutory default interest accrued on that amount up to the opening of the bankruptcy proceedings, the claim for payment of HRK 3,866,945.08 corresponds to the statutory default interest on the amount seized from the applicant bank in the enforcement proceedings on 12 February 1996 accrued in the period between the date of the opening of the bankruptcy proceedings and the date the claim, was reported, and HRK 455,657.80 corresponds to the costs of the bankruptcy proceedings incurred by the applicant bank.

94. Following appeals by both "the bankruptcy estate of Retag" and the applicant bank, on 31 October 2012 the High Commercial Court upheld the first-instance judgment but reduced the amount of costs of the bankruptcy proceedings awarded to the applicant bank to HRK 323.583,73.

2. Criminal proceedings against Mr A.K.

95. On 14 November 2003 the Zagreb County State Attorney's Office (*Županijsko državno odvjetništvo u Zagrebu*) made a request to an investigating judge of the Zagreb County Court (*Županijski sud u Zagrebu*) asking him to open an investigation against the majority (51%) shareholder of Textil and the sole shareholder of Retag (earlier Texhol), Mr A.K., on suspicion that he had committed criminal offences of abuse of office defined in Article 337 paragraphs 1, 3 and 4 of the Criminal Code (see paragraph 158 below).

96. On 18 November 2003 the investigating judge issued a provisional measure prohibiting the Croatian National Bank and other legal entities performing payment operations from making any payments to Retag, or a third person at Retag's order, on the basis of the Commercial Court's decision of 3 October 2003, that court's instruction of 28 October 2003 or any future decision issued on the basis of the original judgment of 7 June 1995. Retag and A.K. appealed.

97. On 10 December 2003 a three-member panel of the Zagreb County Court allowed the appeals and quashed the decision of the investigating judge of 18 November 2003. It held that it was not plausible that the suspect would dispose of the amount in respect of which the provisional measure had been imposed, because administration of Retag's assets had since the opening of the bankruptcy proceedings been in the hands of the bankruptcy administrator and not of A.K. as the sole shareholder.

98. On 19 December 2003 the investigating judge decided to open an investigation in respect of A.K., and thereby commenced criminal proceedings against him. He found that there was a reasonable suspicion

that A.K. had committed the above criminal offence by abusing his position as the majority stockholder of Textil and the sole shareholder of Retag, with a view to obtaining an unlawful pecuniary gain in that he had: (1) on 18 December 1995 ordered the directors of those companies to sign a fictitious assignment contract whereby Textil had assigned its claim against the applicant bank on the basis of the original judgment of 7 June 1995 to Retag (at the time named Texhol) even though he had known at that time that the applicant bank had an outstanding claim against Textil in the amount of HRK 196,982.42 together with interest running from 1 May 1992, and that Textil no longer existed as a legal entity, and (2) that he had later on obtained enforcement of the assigned claim in the enforcement proceedings in the total amount of HRK 170,583,755.31 to the benefit of Retag.

99. The applicant bank participated in these criminal proceedings as an injured party (*oštećenik*), and lodged a pecuniary claim seeking payment of at least HRK 170,583,755.31.

100. On 19 September 2004 A.K. died (see paragraph 76 above). Accordingly, the criminal proceedings against him were discontinued.

3. First civil proceedings for unjust enrichment

101. On 23 March 2004 the applicant bank brought a civil action for unjust enrichment against Retag in the Karlovac Commercial Court seeking: (a) to have declared non-existent and without legal effect the judgment of the Zagreb Commercial Court of 7 June 1995 and the judgment of the High Commercial Court of 31 October 1995, and (b) restitution of the amount seized from it on 22 December 2003.

102. On 2 April 2004 the Karlovac Commercial Court declared the applicant bank's action inadmissible. It held that a civil action was not a remedy to contest final and valid court judgments, as they could be overturned only following an appeal on points of law or other extraordinary remedies (a petition for reopening, constitutional complaint).

103. On 10 November 2004 the High Commercial Court dismissed an appeal by the applicant bank and upheld the first-instance decision endorsing the reasons given by the first-instance court.

104. Following an appeal on points of law by the applicant bank, on 22 September 2010 the Supreme Court quashed the decisions of the lower courts in part and remitted the case to the first-instance court. The Supreme Court upheld the decisions of the lower courts to declare inadmissible the applicant bank's demand to declare non-existent and without legal effect the judgment of the Zagreb Commercial Court of 7 June 1995 and the judgment of the High Commercial Court of 31 October 1995. At the same time the Supreme Court quashed the lower courts' judgments, declaring inadmissible the applicant bank's claim for restitution of the amount seized from it on 22 December 2003.

105. It would appear that the proceedings, currently pending before the Karlovac Commercial Court, have been stayed since 2 February 2010, when

the same court issued a decision to that effect, because Retag had on 12 December 2007 ceased to exist as a legal entity (see paragraph 87 above). They will remain stayed until the defendant's legal successor takes over the proceedings or until the court at the initiative of the plaintiff invites the successor to do so (see paragraph 145 below).

4. Second civil proceedings for unjust enrichment

106. On 22 December 2004 the applicant bank brought another action for unjust enrichment against Retag before the Karlovac Commercial Court seeking restitution of the amount seized from it on 22 December 2003. In so doing it argued, *inter alia*, that the assignment contract concluded on 18 December 1995 between Textil and Texhol had not been valid, because at that time Textil had no longer existed as a legal entity. Since that assignment contract had served as the supplementary enforcement title in the enforcement proceedings, the enforcement had been without legal basis. It followed that by receiving HRK 168,618,419.60 in those enforcement proceedings Retag had been enriched without cause (without a valid legal title). The applicant bank also argued that the amount sought also constituted proceeds of a criminal offence.

107. On 3 April 2007 the Karlovac Commercial Court dismissed the applicant bank's action. It held that the applicant bank could have sought counter-enforcement (*protuizvršenje*) under section 59(1) of the 1978 Enforcement Procedure Act and thus, pursuant to paragraph 4 of that section, could not have brought an action for unjust enrichment before the expiry of the time-limit set forth in paragraph 3 of the same section (see paragraph 146 below).

108. The applicant bank appealed.

109. On 26 March 2008 the High Commercial Court returned the case to the Karlovac Commercial Court with an instruction to stay the proceedings because Retag had on 12 December 2007 ceased to exist as a legal entity (see paragraph 87 above).

110. On 30 June 2008 the Karlovac Commercial Court stayed the proceedings.

111. Following a request by the applicant bank of 30 June 2008 for the bankruptcy administrator to be invited to take over the proceedings, on 1 August 2008 the court did so and the proceedings thereby resumed.

112. On 24 October 2012 the High Commercial Court allowed an appeal by the applicant bank, quashed the first-instance judgment of 3 April 2007 and remitted the case. It would appear that the proceedings are currently again pending before the Karlovac Commercial Court.

5. Civil proceedings for declaring the enforcement inadmissible

113. Meanwhile, on 11 November 2003 the applicant bank brought a civil action against Retag in the Karlovac Commercial Court, seeking that the continuation of enforcement of the original judgment in the enforcement

proceedings (see paragraphs 42-66) be declared inadmissible (*tužba za proglašenje ovrhe nedopuštenom*). It argued that Retag's claim against it had been extinguished by being offset against the applicant bank's claim against Textil (see paragraph 46 above).

114. On 24 February 2004 the Karlovac Commercial Court dismissed the applicant bank's action.

115. Following an appeal by the applicant bank, on 27 December 2007 the High Commercial Court quashed the first-instance judgment and remitted the case.

116. It would appear that the proceedings, currently pending before the Karlovac Commercial Court, have been stayed since 14 February 2008 when that court issued a decision to that effect, because Retag had on 12 December 2007 ceased to exist as a legal entity (see paragraph 87 above). They will remain stayed until the defendant's legal successor takes over the proceedings or until the court at the initiative of the plaintiff invites the successor to do so (see paragraph 145 below).

6. Bankruptcy proceedings against Turist Trip

117. In the meantime, on 9 February 2000 the applicant bank filed a petition for bankruptcy proceedings to be opened against the Turist Trip company, as the legal successor of Textil, before the Karlovac Commercial Court.

118. On 21 June 2000 the Karlovac Commercial Court decided to open bankruptcy proceedings against Turist Trip. By the same decision the court appointed a bankruptcy administrator and invited the creditors to report their higher-ranking claims to him within twenty days of the publication of the decision to open bankruptcy proceedings in the Official Gazette. The notice was published in the Official Gazette of 7 July 2000.

119. The applicant bank, as a bankruptcy creditor, reported to the bankruptcy administrator the claim of HRK 675,367,324.72 (that is, HRK 14,921,617.82 together with the accrued interest from 1 March 1993 until the date of the opening of the bankruptcy proceedings, see paragraph 46 above).

120. At the verification hearing held on 30 November 2001 the bankruptcy administrator acknowledged the applicant bank's claim in the amount of HRK 181,187.11, and contested the remaining amount.

121. On 17 September 2012 the Commercial Court issued a decision to discontinue the bankruptcy proceedings, as the assets belonging to the bankruptcy estate were insufficient to meet all the estate's obligations. Following appeals by the applicant bank and the State Attorney's Office, on 8 January 2013 the High Commercial Court quashed that decision and remitted the case.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The 1978 Obligations Act

1. Relevant provisions

122. The Obligations Act (*Zakon o obveznim odnosima*, Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 29/78, 39/85 and 57/89, and Official Gazette of the Republic of Croatia nos. 53/91, 73/91, 111/93, 3/94, 7/96, 91/96, 112/99 and 88/01 – "the 1978 Obligations Act"), which was in force between and 1 October 1978 and 31 December 2005, was the legislation governing contracts and torts.

123. Section 210 was the provision regulating unjust enrichment. It read as follows:

ENRICHMENT WITHOUT CAUSE

General rule

Section 210

"(1) When a part of the property of one person passes, by any means, into the property of another person, and that transfer has no basis in a legal transaction or a statute [that is, it is without cause], the beneficiary shall be bound to return that property. If restitution is not possible, he or she shall be bound to provide compensation for the value of the benefit received.

(2) ...

(3) The obligation to return the property or provide compensation for its value shall arise even when something is received on account of a cause which did not come into existence or which subsequently ceased to exist."

124. Section 277 of the 1978 Obligations Act was the provision regulating default interest. It was amended twice.

125. The original text of section 277(1) and (2), in force in the period between 1 October 1978 and 2 August 1985, read as follows:

"(1) A debtor who fails to perform his or her obligation to pay a sum of money in time owes, in addition to the principal amount, interest at the rate paid at the place of performance on sight savings deposits.

(2) The Federal Government shall prescribe the default interest rate for obligations to pay a sum of money stemming from commercial contracts."

126. Section 277 of the 1978 Obligations Act was amended the first time with the entry into force of the 1985 Amendments to the 1978 Obligations Act (*Zakon o izmjenama i dopunama Zakona o obveznim odnosima*, Official Gazette of the Socialist Federal Republic of Yugoslavia no. 39/85) on 3 August 1985. According to those amendments, which brought changes only to paragraph 1 of that section while paragraph 2 remained unaltered, the default interest rate for obligations to pay a sum of money stemming from non-commercial contracts was no longer linked to the sight savings deposits rate but the rate on time savings deposits with no established

purpose and with a term longer than one year. In the period between 3 August 1985 and 6 October 1989 section 277 paragraph 1 of the 1978 Obligations Act read as follows:

> "A debtor who fails to perform his or her obligation to pay a sum of money in time owes, in addition to the principal amount, interest at the rate paid at the place of performance on time savings deposits with no established purpose and with a term longer than one year."

127. Section 277 of the 1978 Obligations Act was amended for the second time with the entry into force of the 1989 Amendments to the 1978 Obligations Act (*Zakon o izmjenama Zakona o obveznim odnosima*, Official Gazette of the Socialist Federal Republic of Yugoslavia no. 57/89) on 7 October 1989. Those amendments repealed paragraph 2 of that section and altered its paragraph 1 to provide that the default interest rate was to be determined by special legislation. In the period between 7 October 1989 and 31 December 2005 section 277 paragraph 1 of the 1978 Obligations Act read as follows:

> "A debtor who fails to perform his or her obligation to pay a sum of money in time owes, in addition to the principal amount, interest at the rate prescribed by law."

128. Section 278 of the 1978 Obligations Act read as follows:

Interest on interest

Section 279(1) and (2)

> "(1) Unless the law provides otherwise, default interest does not run [i.e. is not payable] on the unpaid accrued contractual or statutory default interest ...
>
> (2) Default interest on unpaid interest may be sought only from the moment the claim for its payment has been lodged with the court."

129. Sections 360-393 of the 1978 Obligations Act regulated statutory limitation periods (*zastara*). The relevant provisions of that part of the 1978 Obligations Act read as follows:

Section 376

> "(1) A claim for damages shall become time-barred three years after the injured party learned of the damage and the identity of the person who caused it.
>
> (2) In any event that claim shall become time-barred five years after the damage occurred.
>
> ..."

Section 377

> "(1) Where the damage was caused by a criminal offence and the statutory limitation period for criminal prosecution is longer, the claim for damages against the person responsible becomes time-barred at the same time as the criminal prosecution.
>
> (2) The interruption of the statutory limitation period in respect of criminal prosecution entails the interruption of the statutory limitation period in respect of a claim for damages.

...”

...

Section 388

“[Running of] the statutory limitation period shall be interrupted by bringing of a civil action or by taking any other legal action by a creditor against a debtor before a court or other competent authority, with a view to determining, securing or enforcing the claim.”

Section 392

“...

(3) Where the statutory limitation period has been interrupted by bringing of a civil action or other remedy ... it shall start to run again after the termination of the proceedings.

...”

130. Sections 436-445 of the 1978 Obligations Act regulated assignment of a claim by an agreement. In particular, section 440 read as follows:

RELATIONSHIP BETWEEN THE ASSIGNEE AND THE DEBTOR

Section 440

“(1) The assignee shall have all the rights the assignor had against the debtor up to the assignment.

(2) The debtor may raise against the assignee, apart from any objections it may have against him or her, those objections he or she [i.e. the debtor] could have raised against the assignor up to the moment he or she [i.e. the debtor] learned of the assignment.”

2. Relevant case-law

131. The stance of the domestic courts as regards the specification (of the method and rate) of the statutory default interest rate is best expressed in the decision of the Varaždin County Court (*Županijski sud u Varaždinu*) no. Gž-787/04-2 of 14 May 2004 (published on 2 January 2006 in the Supreme Court’s publication “*Izbor odluka Vrhovnog suda Republike Hrvatske*” [Selection of decisions of the Supreme Court of the Republic of Croatia], no. 1/2005.), where that court, in enforcement proceedings, dismissed an appeal lodged by the debtor and upheld the writ of execution issued by the first-instance court. In her appeal the debtor argued in particular that the first-instance court had not in its writ of execution specified the method of calculation of the statutory default interest. The relevant part of that decision read as follows:

“The debtor [the appellant] wrongly considers that the court has to specify the method of calculation of the statutory default interest in the writ of execution.

Rules on [statutory] default interest, provided in the Default Interest Act and the Default Interest Rate Regulation, are mandatory rules [*jus cogens*]. Thus, neither the court nor the parties are entitled to specify the method of calculation of the statutory

default interest rate given that ... the payment of the default interest may be made only at the rate established by law.

The debtor is therefore to be informed that the calculation of the [statutory] default interest is provided in section 3 of the Default Interest Act, for which reason the first-instance court does not have to specify the calculation of the [statutory] default interest, as the debtor wrongly argues in [her] appeal.

...

Given that the statutory default interest [due] on the principal debt runs from the moment it [i.e. the principal debt] becomes due until payment, the first-instance court could not have made any calculation of the [statutory default] interest when issuing the writ of execution. For that reason, the first-instance court correctly ordered the legal entity performing payment operations [FINA] to transfer to the creditor the sum in respect of which the enforcement was ordered.

If FINA has, on the basis of the writ of execution, transferred a higher sum than the one specified in the writ of execution, as the debtor claims, because it misapplied the provisions of the Default Interest Act, the debtor shall have a claim for unjust enrichment against the creditor, and the legal entity who carried out the enforcement may be liable in damages if it is [subsequently] established that the creditor cannot return what was received contrary to the writ of execution or the mandatory rules of the Default Interest Act."

132. The statutory default interest rate provided by section 277(1) of the 1978 Obligations Act, which was in force in the period between 3 August 1985 and 6 October 1989 (see paragraph 126 above) linked to the "rate paid at the place of performance on time savings deposits with no established purpose and with a term longer than one year", was in that period in practice further specified, as regards interest rates, by reference to the Inter-Bank Interest Rate Self-Management Agreement (see paragraphs 133-137 below) of 18 June 1986 (amended on 8 October 1986) concluded under the auspices of the Association of Banks of Yugoslavia (*Udruženje banaka Jugoslavije*). For example, in judgment Rev 758-1990-2 of 24 May 1990 the Supreme Court held as follows:

"According to the amended provision of section 277(1) of the Obligations Act (Official Gazette of the SFRY nos. 39 and 46/85) which is relevant in this case, a debtor who fails to perform his or her obligation to pay a sum of money in time owes, in addition to the principal amount, interest at the rate paid at the place of performance on time savings deposits with no established purpose and with a term longer than one year. That means that after the conclusion of the main hearing the [statutory] default interest [rate] may be reduced in accordance with the Inter-Bank Interest Rate Policy Self-Management Agreement (from 7 October 1989 in accordance with federal legislation). Therefore, the calculation of the statutory default interest should be left to the enforcement proceedings (unless, of course, the debtor fulfils his obligation of his own will)."

B. Inter-Bank Interest Rate Policy Self-Management Agreement

133. The Inter-Bank Interest Rate Policy Self-Management Agreement (*Samoupravni sporazum banaka o politici kamatnih stopa*) of 18 June 1986 was concluded by the banks who were members of the Association of

Banks of Yugoslavia and entered into force on 1 July 1986. It was amended on 8 October 1986, which amendments entered into force on 1 November 1986. The consolidated text of the Agreement was published in *Jugoslovensko bankarstvo* [Yugoslav Banking], no. 11 of November 1986, a periodical published by the Association of Banks of Yugoslavia. The relevant articles of that Agreement read as follows:

134. Article 4 paragraph 1 stipulated that the banks were to pay uniform interest calculated in accordance with the uniform interest rates established by that Agreement. Article 4 paragraph 2 stipulated that the banks were to pay a positive real interest rate on time deposits with no established purpose and with a term longer than one year.

135. Article 5 paragraph 2 stipulated that the positive real interest rate was equal to the marginal lending rate of the National Bank of Yugoslavia.

136. Article 7 stipulated that the interest rate payable on time deposits in domestic currency with no established purpose and with a term longer than one year was to be determined by increasing the positive real interest rate by a certain number of percentage points, depending on the term during which the deposit could not be withdrawn. Accordingly, it further stipulated that the interest rate payable on time deposits with no established purpose and with a term longer than twenty-four months was to be calculated by increasing the positive real interest rate by three percentage points, whereas the interest rate payable on such deposits with a term longer than thirty-six months was to be calculated by increasing the positive real interest rate by five percentage points.

137. Article 11 stipulated that, after receiving the official data on the marginal lending rate of the National Bank of Yugoslavia, the secretary general of the Association of Banks of Yugoslavia had to determine the interest rate payable on time deposits with no established purpose, and had to inform the banks thereof in due time.

C. Legislation relating to statutory default interest

138. After the entry into force of the 1989 Amendments to the Obligations Act (see paragraph 127 above) from 7 October 1989 to 1 January 2008 statutory default interest was regulated by special legislation, following which the statutory interest rate was regulated by the new 2006 Obligations Act (*Zakon o obveznim odnosima*, Official Gazette nos. 35/05, 41/08 and 125/11). The rates and method of calculation changed as follows:

Period	Legislative act	Rate	Method of calculation
7 October 1989 – 21 October 1993	Default Interest Rate Act (*Zakon o visini stope zatezne kamate*)	Marginal lending rate of the Yugoslav/Croatian National Bank + 20%	Compound, monthly
22 October 1993 – 3 February 1994	Default Interest Rate Regulation (*Uredba o visini stope zatezne kamate*)	Monthly marginal lending rate of the Croatian Central Bank + 6%	
4 February 1994 – 31 March 1994		Monthly marginal lending rate of the Croatian Central Bank + 2,4%	
1 April 1994 – 30 June 1994		30% per year	Compound for periods less than one year
1 July 1994 – 19 April 1996		22% per year	
20 April 1996 – 7 May 1996	Default Interest Act (*Zakon o zateznim kamatama*)	22% per year	
8 May 1996 – 10 September 1996		24% per year	
11 September 1996 – 30 June 2002		18% per year	
1 July 2002 – 19 July 2004		15% per year	
20 July 2004 – 2 November 2004	Interest Act (*Zakon o kamatama*)	15% per year	Simple
3 November 2004 – 31 December 2007		15% per year	
1 January 2008 – 29 June 2011	2006 Obligations Act (*Zakon o obveznim odnosima*)	Marginal lending rate of the Croatian Central Bank (9%) + 8% for commercial contracts, and + 5% for non-commercial contracts	
30 June 2011 onwards		Marginal lending rate of the Croatian Central Bank (7%) + 8% for commercial contracts, and + 5% for non-commercial contracts	

139. On 30 April 2004 the Croatian Parliament adopted the Authentic Interpretation of Section 3(1) of the Default Interest Act (*Vjerodostojno tumačenje članka 3. stavka 1. Zakona o zateznim kamatama*, Official Gazette 28/96 of 7 May 2004), the relevant part of which reads as follows:

> "Special legislation, the Default Interest Act, in section 3(1) sets out the prescribed method of calculating the default interest payable by applying the compound method for periods less than one year. It is clear and unambiguous that when calculating default interest for periods exceeding one year the compound method cannot be applied and that the simple method applies."

D. Legislation relating to denominations of the domestic currency

140. The Dinar Value Change 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.

141. 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. 71/91), 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.

142. 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 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. 37/94) 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.

E. The Civil Procedure Act

143. Section 12 of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 4/77, 36/77 (corrigendum), 36/80, 69/82, 58/84, 74/1987, 57/89, 20/90, 27/1990 and 35/91 and Official Gazette of the Republic of Croatia nos. 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 123/08, 57/11 and 148/11), which has been in force since 1 July 1977, provides as follows:

Section 12

> "When the court's decision depends on the prior resolution of an issue whether a certain right or legal relationship exists, and this issue has not yet been decided by a court or other competent authority (the preliminary issue), the court may settle that issue itself, unless special legislation provides otherwise.
>
> The court's decision on a preliminary issue shall have legal effect only in the civil proceedings in which that issue was settled.
>
> In civil proceedings the court shall, as regards the existence of a criminal offence and the perpetrator's criminal liability, be bound by the final judgment of the criminal court whereby the accused was found guilty."

144. The Supreme Court has consistently held (see, for example, judgments nos. Rev-2563/1992-2 of 6 April 1993, Rev-48/01-2 of 23 July 2003, Rev-217/2005-2 of 20 October 2005, and Rev-x 20/08-2 of 25 November 2008, Rev-282/08-2 of 25 February 2009, and Rev 840/08-2 of 10 February 2010) that civil courts were entitled on the basis of section 12

of the Civil Procedure Act to decide whether a criminal offence had been committed for the purposes of applying longer statutory limitation periods provided in section 377 of the 1978 Obligations Act (see paragraph 129 above) only exceptionally, that is, only when criminal proceedings could not have been instituted or continued due to procedural impediments or because the suspect had died. The Supreme Court held in particular:

> "The right of civil courts to establish whether the damage was caused by a criminal offence is an exception as they may do so only when there were procedural impediments preventing conduct of the criminal proceedings against the person responsible, for example, if that person died ... or was mentally incapacitated. In such cases civil courts are entitled to decide whether the damage was caused by a criminal offence as on a preliminary issue (section 12 of the Civil Procedure Act)."

145. Other relevant provisions of the Civil Procedure Act, as in force at the material time, provided as follows:

WITHDRAWAL OF JUDGES

Section 73

"The parties may only seek withdrawal of a judge sitting in the case or the president of the court who should decide on the motion for withdrawal.

A motion for withdrawal is inadmissible:

1) if it vaguely seeks the withdrawal of all judges of a specific court or all judges who could sit in the case;

2) if it has already been decided on;

3) if no reason for seeking withdrawal has been given.

The motion referred to in paragraph 2 of this section shall be declared inadmissible by the single judge or the president of the panel before which the proceedings in relation to which the withdrawal is requested are pending.

No separate appeal is allowed against the decision referred to in paragraph 3 of this section.

If the motion for withdrawal referred to in paragraph 2 of this section is made in a legal remedy, it shall be declared inadmissible by the president of the first-instance court.

...

A party may request the withdrawal of a judge of a higher court in an appeal or a reply thereto."

STAY, DISCONTINUATION AND SUSPENSION OF PROCEEDINGS

Section 212

"Proceedings shall be stayed:

1) ...

2) ...

3) ...

4) when a party which is a legal entity ceases to exist or when the relevant authority prohibits its operation by a final decision,

5) when the legal effects of the opening of bankruptcy proceedings occur,

6) ...

7) ...

8) ...”

...

Section 215(1)

“Proceedings stayed on grounds referred to in sub-paragraphs 1-5 of section 212 of this Act shall be resumed when ... the bankruptcy administrator or the legal successors of the legal entity take over the proceedings or when the court, at the request of the opposing party or of its own motion, invites them to do so.”

...

Section 215b

“Proceedings shall be discontinued when a party dies or ceases to exist in proceedings concerning rights which do not pass to that party’s heirs or legal successors.

In cases referred to in paragraph 1 of this section the court shall serve the decision to discontinue the proceedings on the opposing party and on the heirs or legal successors of the party after they have been determined [that is, after their identity has been established].

...

A decision to discontinue proceedings because a legal entity has ceased to exist shall be served on the opposing party and its legal successor after it has been determined. If a legal entity does not have a legal successor, the court shall, upon the proposal of the opposing party of its own motion, forward the decision on discontinuation to the state attorney.

...

...”

...

PROCEDURE IN COMMERCIAL MATTERS

Preparation of main hearing

Section 495(4)

“In urgent cases the president of the panel is authorised to schedule a hearing by telephone or telegraph.”

F. The 1978 Enforcement Procedure Act

146. The relevant part of the Enforcement Procedure Act (*Zakon o izvršnom postupku*, Official Gazette of the Socialist Federal Republic of Yugoslavia, nos. 20/78, 6/82, 74/87, 57/89, 20/90, 27/90 and 35/91 and

Official Gazette of the Republic of Croatia nos. 53/91 and 91/92), which was in force between 1 October 1978 and 10 August 1996, provided as follows:

Decisions and the composition of [enforcement] court

Section 7(2) and (3)

"In enforcement ... proceedings the court shall issue decisions [*odluke*] in the form of a decision [*rješenje*] or instruction [*zaključak*].

By an instruction the court shall order the bailiff to take certain actions in the proceedings and shall decide on other issues concerning the conduct of the proceedings."

Legal remedies

Section 8(1) and (7)

"Unless otherwise provided by this Act, an appeal lies against a first-instance decision [*rješenje*].

...

No remedy lies against an instruction [*zaključak*]."

Inadmissibility of an appeal on points of law or petition for reopening of proceedings

Section 9

"Appeals on points of law or petitions for reopening of proceedings are inadmissible against a final decision rendered in enforcement or security proceedings."

Urgency and order of priority

Section 10(1)

"In enforcement ... proceedings the court shall proceed urgently."

...

Application of provisions of the Civil Procedure Act

Section 14

"Unless otherwise provided by this Act or another statute, in enforcement ... proceedings the provisions of the Civil Procedure Act shall apply *mutatis mutandis*."

Payment of default interest

Section 20a(1)

"If after the issuance of an enforcement title the default interest [rate] changes, the court shall, at the request of the enforcement creditor or debtor in the writ of execution, order payment of default interest at the new rate."

...

Transfer of a claim or debt

Section 22(1)

"Enforcement shall also be ordered at the request of a person who is not designated as the creditor in an enforcement title if [that person] proves by a public deed or a deed certified in accordance with the law that the claim has been transferred or otherwise passed to him or her. In the event that that is not possible, the transfer of the claim shall be proved by a final decision rendered in civil proceedings."

...

DEBTOR'S OBJECTION TO A WRIT OF EXECUTION

Objection as sole legal remedy

Section 48

"A debtor may contest a writ of execution [only] by an objection unless the debtor is only contesting a decision on costs."

Competence

Section 49

"The court which issued the writ of execution shall decide on the debtor's objection."

Grounds for objection

Section 50

"An objection to a writ of execution may be lodged on grounds which prevent enforcement, and especially:

...

8) ... if the [creditor's] claim has been extinguished on the basis of a fact which occurred after the decision [the enforcement title] became enforceable, or before that but at a time when the debtor could not raise it in the proceedings from which the enforcement title originated ...

...

12) if the claim has not been transferred to the [enforcement] creditor or the debt has not been transferred to the debtor;

- ..."

Objection after the expiry of the time-limit

Section 51

"An objection based on the fact concerning [that is, relevant for the existence or validity of] the claim (section 54 paragraph 1) may be lodged even after the time-limit of eight days has elapsed (section 8) if that fact occurs after the enforcement title has been adopted or at a time when it could no longer be raised in the proceedings from which the enforcement title originated.

An objection [of the type] referred to in paragraph 1 of the section may be lodged [at any time] before the conclusion of the enforcement proceedings."

...

Instructions to the parties to institute civil or other proceedings

Section 54(1), (2) and (4)

"If a decision on an objection depends on the fact concerning [that is, relevant for the existence or validity of] the claim itself, and if it is disputed between the parties, the court shall instruct the debtor to institute civil or other proceedings within a certain time-limit in order for the enforcement to be declared inadmissible.

The debtor may institute civil or other proceedings referred to in paragraph 1 of this section even after the expiry of the time-limit fixed by the court, [but] before the conclusion of the enforcement proceedings, but in that case shall bear the costs incurred by exceeding that time-limit.

...

If the court gives a final decision finding that the enforcement was inadmissible, the [enforcement] court shall, at the request of the debtor, discontinue the enforcement and set aside the measures taken."

...

COUNTER-ENFORCEMENT

Grounds for counter-enforcement

Section 59

"After enforcement has been carried out, the [enforcement] debtor may apply for counter-enforcement, asking the [enforcement] creditor to return what he has received by way of the enforcement:

1) if the enforcement title has been quashed, reversed, annulled or set aside by a final decision,

2) if he or she has satisfied the [enforcement] creditor's claim during the enforcement proceedings,

3) if the writ of execution has been quashed or reversed by a final decision,

4) if enforcement by seizure and transfer of funds from the debtor's account ...or by payment in cash, has been declared inadmissible.

An application for counter-enforcement may be lodged within thirty days of the day the [enforcement] debtor learns of the ground for counter-enforcement, and at the latest within a year following the conclusion of the enforcement proceedings.

Before the expiration of that time-limit the [enforcement] debtor may not pursue his or her claim in civil proceedings."

...

1. Postponement of enforcement

At the request of the debtor

Section 63

"At the request of the debtor the court shall postpone enforcement entirely or in part if the debtor makes it plausible that he or she would sustain significant damage if the enforcement were to be carried out:

1) if an extraordinary remedy has been lodged against the decision [i.e. the enforcement title] on the basis of which the enforcement was ordered;

2) if a motion for restoring the proceedings into previous position [*restitutio in integrum ob terminem elapsum*] has been lodged in the proceedings that resulted in the decision [i.e. the enforcement title] on the basis of which the enforcement was ordered;

3) if an action has been brought for annulment of the arbitral award on the basis of which the enforcement was ordered;

4) if a request for the protection of legality has been lodged against the final decision adopted in the enforcement proceedings;

- if an action has been brought to set aside the [court] settlement on the basis of which the enforcement was ordered;

5) if the debtor has lodged an objection or brought an action against the writ of execution;

6) if the debtor has applied that the certificate of enforceability be set aside;

7) if the enforcement depends on the reciprocal performance of some obligation by the creditor, and the debtor has refused to perform this obligation because the creditor has not performed his, and has not demonstrated willingness to perform it reciprocally;

8) if the debtor or a participant in the proceedings has requested that irregularities committed while the enforcement was being carried out be removed;

The court may, at the request of the debtor, also postpone enforcement in other cases where there are particularly justified reasons [for doing so].

The court may, depending on the circumstances of the case, condition postponement of enforcement by giving of security."

G. The 1996 Enforcement Act

147. The relevant provision of the Enforcement Act (*Ovršni zakon*, Official Gazette, nos. 57/96, 29/99, 42/00, 173/03, 194/03, 151/04, 88/05, 121/05 and 67/08), which was in force between 11 August 1996 and 14 October 2012, read as follows:

Ongoing [enforcement] proceedings

Section 309

"Ongoing [enforcement] proceedings shall be concluded under the provisions of the legislation that was in force before this Act's entry into force."

H. The Bankruptcy Act

1. Relevant provisions

148. The relevant part of the Bankruptcy Act (*Stečajni zakon*, Official Gazette, nos. 44/96, 29/99, 129/00, 123/03, 82/06, 116/10 and 25/12), which has been in force since 1 January 1997, provides as follows:

Principles of [bankruptcy] procedure

Section 7(2)

"Bankruptcy proceedings shall be urgent."

...

Bankruptcy administrator's liability

Section 28

"(1) A bankruptcy administrator is bound to compensate any participant for damage if he or she wrongfully breaches any of his or her duties.

(2) A bankruptcy administrator shall not be liable for damage caused by acts approved by a bankruptcy judge or by actions taken in the execution of an order or instruction of a bankruptcy judge, unless the order or instruction has been obtained fraudulently.

(3) ...

(4) A bankruptcy administrator is bound to compensate a creditor of the bankruptcy estate for damage sustained by non-performance of an obligation undertaken by his or her legal act, unless the bankruptcy administrator could not have foreseen [at the time] that [the assets of] the bankruptcy estate would not be sufficient to satisfy that obligation.

(5) The right to claim compensation for damage caused by a bankruptcy administrator's breach of duty shall become time-barred upon the expiration of the three-year time-limit [which runs] from the moment the injured party learned of the damage and of the circumstances giving rise to the bankruptcy administrator's liability. The right to claim compensation shall become time-barred at the latest upon the expiration of the three-year time-limit [which runs] from the moment the decision to close the bankruptcy proceedings becomes final. ...

(6) After assuming his or her duties, the bankruptcy administrator shall take out insurance ... against the liability provided in this section, once the bankruptcy judge has determined the amount of the premium, having regard to the expected size of the bankruptcy estate and the complexity of the proceedings. Insurance costs are the costs of bankruptcy proceedings.

(7) Claims for damages [brought] against the bankruptcy administrator shall be decided by a court in civil proceedings."

149. The Bankruptcy Act distinguishes between several types of creditors and, accordingly, several types of obligations of a bankruptcy debtor. Creditors of the bankruptcy debtor (*vjerovnici stečajnog dužnika*) in the wider sense are: (a) secured creditors (*razlučni vjerovnici*), (b)

bankruptcy creditors (*stečajni vjerovnici*) in the strict sense, and (c) creditors of the bankruptcy estate (*vjerovnici stečajne mase*).

150. Segregation creditors (*izlučni vjerovnici*) are not creditors of the bankruptcy debtor but persons who, on the basis of their right of ownership or other right, may lay claim to specific property which is in the possession of the bankruptcy debtor. Section 79 defines such creditors as persons who on the basis of a certain right *in rem* or a right *ad personam* can prove that a specific property does not belong to the bankruptcy estate because of that right. They are entitled to pursue their claims against the bankruptcy debtor outside bankruptcy proceedings, that is, in separate civil and/or enforcement proceedings.

151. Section 70 defines (ordinary, unsecured) bankruptcy creditors (*stečajni vjerovnici*) as personal creditors of the bankruptcy debtor who at the time bankruptcy proceedings were opened had a pecuniary claim against the debtor. Those creditors are required to report their claims to the bankruptcy administrator within the time-limit set forth in the decision to open bankruptcy proceedings (section 54(3)), and those claims are then examined at the verification hearing (*ispitno ročište*). The claims of creditors reported after the expiry of that time-limit may be reported at the latest within three months of the first verification hearing and examined at a separate verification hearing (*posebno ispitno ročište*) at the expense of those creditors (section 175(2)). Claims reported after the expiry of that additional time-limit are to be declared inadmissible.

152. Since creditors may, once bankruptcy proceedings have commenced, pursue their claims against the bankruptcy debtor only in those proceedings (section 96), civil or enforcement proceedings instituted to pursue those claims which are pending at the time of the opening of bankruptcy proceedings are stayed by the operation of law. If the bankruptcy administrator acknowledges at the verification hearing a claim of a bankruptcy creditor, the court will issue a decision to that effect (section 177). Once that decision becomes final the claim is considered finally determined as if it had been determined by a final court judgment in civil proceedings. Therefore, the stayed civil proceedings concerning the same claim become obsolete. On the other hand, if the bankruptcy administrator or another bankruptcy creditor disputes (contests), at the verification hearing, a bankruptcy creditor's claim, the court shall instruct that party to institute separate debt determination civil proceedings or to resume the existing ones (section 178).

153. Section 70 places bankruptcy creditors in three categories. The creditors of a lower priority rank (subordinated creditors) may be satisfied only after the claims of higher-priority creditors have been satisfied in full. Creditors of the same rank are satisfied in proportion to the amount of their claims. The claims of the first higher rank are those of employees and former employees of the bankruptcy debtor which have been generated before the opening of the bankruptcy proceedings, severance pay and claims for damage sustained by a work-related injury or occupational disease.

Claims of the second higher rank (also called general rank claims) are all claims not classified as the first higher rank or the lower rank claims. Claims of the lower rank are, for example, interest accrued on bankruptcy creditors' claims after the opening of bankruptcy proceedings (section 72(1) sub-paragraph 1).

154. Secured creditors (*razlučni vjerovnici*) are those creditors who have a security interest (for example a pledge, mortgage or fiduciary ownership) on property belonging to the bankruptcy estate and who, on the basis of that security interest, are entitled to have their claims satisfied, as a matter of priority and separately from other creditors, from the value of that property (by, for example, selling it and satisfying their claims from the proceeds of the sale, sections 81-84). Those creditors are entitled to pursue their claims outside bankruptcy proceedings, in particular in enforcement proceedings (section 98(5)). They are not required to report their claims to the bankruptcy administrator, but merely to notify him of them (section 173(4)). However, they are entitled to act as bankruptcy creditors (*stečajni vjerovnici*) and to report their claims to the bankruptcy administrator if: (a) they waive their security, or (b) the property in respect of which they had the security interest was not sufficient to satisfy their claims in full (sections 84 and 173(4)).

155. Creditors of the bankruptcy estate (*vjerovnici stečajne mase*) are those creditors whose claims against the bankruptcy debtor arose after the opening of bankruptcy proceedings. They are preferential creditors whose claims are satisfied undiscounted and directly from the bankruptcy estate (unless the estate is unable to cover even these claims). Their claims correspond to the obligations of the bankruptcy estate (the costs of the bankruptcy proceedings and other obligations of the bankruptcy estate) as defined in sections 85 and 87 of the Bankruptcy Act. They are entitled to pursue their claims against the bankruptcy estate outside bankruptcy proceedings, that is, in separate civil or enforcement proceedings (see, for example, Supreme Court decision Revt-118/05-2 of 23 March 2006 and High Commercial Court decisions Pž-2523/02 of 22 October 2002 andPž-6172/01 of 16 April 2002). They are not required to report their claims to the bankruptcy administrator. However, in order to be able to participate in the distribution of funds from the bankruptcy estate, the bankruptcy administrator must learn of their claims at the latest at the relevant (interim or final) distribution hearing or, in the event of subsequent distribution, before the publication of the subsequent distribution list (see below, section 202 of the Bankruptcy Act). The relevant provisions of the Bankruptcy Act concerning the bankruptcy estate and the obligations of the bankruptcy estate read as follows:

The notion of the bankruptcy estate

Section 67

"(1) The bankruptcy estate consists of the total assets of the [bankruptcy] debtor at the time of the opening of bankruptcy proceedings, and [any] assets it acquires during the bankruptcy proceedings.

(2) The bankruptcy estate serves to cover the costs of the bankruptcy proceedings and to satisfy the claims of creditors of the bankruptcy debtor, as well as the claims whose satisfaction has been secured by security interests in the [bankruptcy] debtor's assets [i.e. the claims of secured creditors]."

...

Obligations of the bankruptcy estate

Section 85

"(1) The costs of bankruptcy proceedings and other obligations of the bankruptcy estate shall be settled first from the bankruptcy estate.

(2) The obligations of the bankruptcy estate referred to in paragraph 1 of this section shall be settled by the bankruptcy administrator in the order [in which] they become due."

...

Other obligations of the bankruptcy estate

Section 87(1)

"The other obligations of the bankruptcy estate include obligations:

1. arising from acts conducted by the bankruptcy administrator ...

2. ...

3. ...

4. arising from unjust enrichment of the estate,

5. claims of employees of the bankruptcy debtor that arose after the opening of the bankruptcy proceedings."

Payment of the obligations of the bankruptcy estate

Section 87a

"(1) Throughout the entire proceedings the bankruptcy administrator shall take care to ensure from the bankruptcy estate the funds necessary to settle the foreseeable obligations of the bankruptcy estate. While paying certain obligations of the bankruptcy estate he or she shall reserve the funds necessary to cover those obligations which it can legitimately be assumed would have to be settled in the future.

(2) Before the conclusion of bankruptcy proceedings, the bankruptcy administrator shall, with the approval of the bankruptcy judge, deposit the part of the bankruptcy estate reserved [pursuant to] paragraph 1 of this section with the court or a notary public. After the conclusion of the bankruptcy proceedings, the bankruptcy judge shall decide on payments from the deposited sum at the request of individual creditors of

the bankruptcy estate, [while] taking care of the need to ensure adequate funds to pay those creditors who do not yet have an enforcement title or other valid legal basis necessary to pursue [i.e. enforce] their claims."

...

List of creditors

Section 151(1)

"The bankruptcy administrator shall be bound to compile a list of all creditors of the [bankruptcy] debtor of which he or she learned from [information in] the books and business records of the [bankruptcy] debtor, from other data [in the possession] of the [bankruptcy] debtor, from the claims the creditors reported, or in some other way."

...

DISTRIBUTION

Satisfaction of bankruptcy creditors

Section 183(4)

"The bankruptcy administrator shall make the distributions. Before each distribution, he or she shall obtain the consent of the board of creditors, and if no board of creditors has been set up, the approval of the bankruptcy judge."

Distribution list

Section 184

"(1) Prior to a distribution, the bankruptcy administrator shall compile a list of claims which are to be taken into account during the distribution. ...

(2) That list shall be displayed on the premises of the bankruptcy court for inspection by the participants [in the bankruptcy proceedings]. The bankruptcy administrator shall issue a public notice of the total amount of all claims and the amount available from the bankruptcy estate to be distributed to creditors."

...

Final distribution

Section 192

"(1) The final distribution may commence as soon as the realisation [i.e. liquidation] of [the assets pertaining to] the bankruptcy estate has been completed.

(2) The final distribution may be undertaken only with the approval of the bankruptcy judge."

Final hearing

Section 193(1) and (3)

"(1) When giving approval for the final distribution, the judge shall schedule a final hearing of creditors. At that hearing:

1. ...

2. objections to the final [distribution] list may be raised,

3. ...

(2) ...

(3) At the final hearing the bankruptcy judge shall decide on [any] creditors' objections referred to in sub-paragraph 2 of paragraph 1 of this section."

Depositing reserved amounts

Section 194

"The bankruptcy administrator shall, with the consent of the bankruptcy judge, deposit with the court or the notary public, and on behalf of the persons concerned, the amounts reserved during the final distribution."

Surplus after the final distribution

Section 195

"If, during the final distribution, all the bankruptcy creditors' claims can be settled in full, the bankruptcy administrator shall give the surplus to the individual debtor. If the debtor is a legal entity, the bankruptcy administrator shall give each person holding a share in the debtor [company] the part of the surplus to which they would be entitled in the event of liquidation outside bankruptcy proceedings [such as in the event of winding up]."

CONCLUSION OF BANKRUPTCY PROCEEDINGS

Decision on the conclusion of bankruptcy proceedings

Section 196(1) and (3)

"(1) The bankruptcy judge shall issue a decision on conclusion of the bankruptcy proceedings immediately after completion of the final distribution.

(2) ...

(3) The decision referred to in paragraph 1 of this section shall be forwarded to the court or other authority which keeps the register of the [bankruptcy] debtor as a legal entity... By being deleted from that register the [bankruptcy] debtor shall cease to exist as a legal entity ... "

...

Subsequent distribution

Section 199

"(1) The bankruptcy judge shall, at the request of the bankruptcy administrator, any of the creditors, or of his or her own motion, order the continuation of proceedings for the purposes of subsequent distribution if, after the final hearing:

1. the conditions for distribution of the reserved amounts to the creditors are met,

2. amounts that have been paid out of the bankruptcy estate have been returned to the estate,

3. [further] assets pertaining to the bankruptcy estate have been found.

(2) ...

(3) ...

(4) The assets referred to in paragraph 1 of this section are [those of] the bankruptcy estate, and the provisions of this Act on the debtor and its organs shall apply to them *mutatis mutandis*. Unless otherwise provided by this Act, civil proceedings may be pursued in the name and on behalf of that estate for the purpose of collecting assets that belong to it. After the completion of subsequent distribution the bankruptcy judge shall issue a decision on the conclusion of the bankruptcy proceedings"

...

Exclusion of creditors of the bankruptcy estate

Section 202

"Creditors of the bankruptcy estate of whose claims the bankruptcy administrator has learned:

1. ...

2. during final distribution, after the final hearing,

3. during subsequent distribution, [but] after the publication of the list of that distribution,

may seek satisfaction [of their claims] only from the [residual] funds remaining after the distribution of the bankruptcy estate."

2. Relevant case-law

156. In its decision Pž-6471/05-3 of 2 April 2007 the High Commercial Court, in interpreting section 199(4) of the Bankruptcy Act, held that while after the conclusion of the bankruptcy proceedings and deletion from the register of commercial companies the bankruptcy debtor no longer existed as a legal entity, its undistributed assets formed the bankruptcy estate, represented by the bankruptcy administrator, in the name and on behalf of which proceedings may be conducted. The relevant part of that decision read as follows:

"The plaintiff indicated the bankruptcy estate as the legal successor of the defendant. The first-instance court in its decision did not specify how it had established that the defendant had no assets pertaining to the estate ... Lack of funds to settle the plaintiff's claim is not an obstacle to pursuing proceedings for payment [of a sum of money]. Potential impracticability of future satisfaction of the [plaintiff's] claim is not an obstacle to the court's deciding on [it] in adversarial proceedings. Whether the plaintiff may seek payment of damages and default interest from the bankruptcy debtor is a different matter. The powers of the bankruptcy administrator are not entirely extinguished with the conclusion of the bankruptcy proceedings. The [civil] proceedings pending at the moment of the conclusion of the bankruptcy proceedings continue in the name and on behalf of the bankruptcy estate of the bankruptcy debtor. The provisions of the Bankruptcy Act concerning the bankruptcy debtor and its organs (section 199 paragraph 4) apply to the bankruptcy estate *mutatis mutandis*. On [its] behalf proceedings to collect the assets pertaining to the bankruptcy estate may continue, and the bankruptcy administrator is still required to represent the bankruptcy estate in proceedings instituted by the bankruptcy creditors against the bankruptcy estate. These rules apply even where the funds have not been reserved on

a special account, [in which case it is] for a creditor to assess whether he or she has [any] interest in pursuing such a suit."

I. The Commercial Companies Act

157. The relevant provisions of the Commercial Companies Act (*Zakon o trgovačkim društvima*, Official Gazette 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 152/11 and 111/12), which has been in force since 1 January 1995, read as follows:

Liability of a commercial company's members

Section 10

(1) Members of a general partnership and general partners in a limited partnership shall be liable personally, jointly and severally, and unlimitedly for the obligations of the company, with all their assets.

(2) Unless provided otherwise by this Act, members [i.e. shareholders] of a limited liability company and stockholders of a joint stock company shall not be liable for the obligations of the company.

(3) Anyone who abuses the fact that, as a company member, he or she is not liable for the obligations of the company, cannot claim that by law he or she is not liable for those obligations.

(4) The requirement for liability of a company member referred to in paragraph 3 of this section shall be considered satisfied especially if he or she:

1. uses the company to achieve goals otherwise prohibited;

2. uses the company to damage creditors;

3. contrary to the law, manages the assets of the company as if they are his or her own;

4. reduces the assets of the company in his favour or in favour of another person although he or she knew or should have known that the company would not be able to meet its obligations."

...

JOINT STOCK COMPANY

WINDING UP [LIQUIDATION]

The liquidator's liability for damage

Section 383

"(1) After the company has been deleted from the register of commercial companies, the actions of the liquidator may no longer be contested, but the creditors of the company may claim compensation from him or her for damage caused by his or her actions.

(2) The liquidator shall be liable for damage caused in the course of liquidation up to five times the amount of the remuneration he or she received for his work. If that is not sufficient to compensate for the damage, all shareholders shall be jointly and

severally liable for it [i.e. the damage] up to the value of the company's [residual] assets paid to them ..."

J. The Criminal Code

158. The relevant part of the Criminal Code (*Kazneni zakon*, Official Gazette nos. 110/97, 27/98 (corrigendum), 50/00, 129/00, 51/01, 111/03, 190/03, 105/04, 84/05, 71/06, 110/07, 152/08 and 57/11), which was between 1 January 1998 and 31 December 2012, read as follows:

Statutory limitation of criminal prosecution

Article 19

"(1) Criminal prosecution ... cannot be undertaken after expiry of the following periods, calculated from the time the offence was committed:

- ...

- ...

- ten years if the case concerns a criminal offence punishable by more than five years' imprisonment,

..."

...

Running and interruption of the statutory limitation periods

Article 20

(1) The limitation period shall start to run from the date on which the criminal offence was committed.

(2) ...

(3) The statutory limitation period shall be interrupted each time a procedural step aimed at the prosecution of the offence is taken.

...

(5) The statutory limitation period shall start to run again after each interruption.

(6) ..."

...

Abuse of office or official authority

Article 337

"(1) An official or a person responsible who, with the aim of procuring for himself or herself or another individual or legal entity a non-pecuniary gain [non-pecuniary advantage], or to cause damage to another individual or legal entity, abuses his office or official authority, oversteps the limits of his or her official authority, or fails to perform his duty, shall be punished by imprisonment of three months to three years.

(2) If the criminal offence referred to in paragraph 1 of this Article results in considerable damage or a serious breach of the rights of others, the perpetrator shall be punished by imprisonment of six months to five years.

(3) If a pecuaniary gain [pecuniary advantage] is acquired by the criminal offence referred to in paragraph 1 of this Article, the perpetrator shall be punished by imprisonment of one to five years.

(4) If a pecuniary gain acquired by the criminal offence referred to in paragraph 1 of this Article is considerable or if it resulted in a damage of a large scale, and if the perpetrator acted with the aim of acquiring such a gain, the perpetrator shall be punished by imprisonment of one to ten years."

K. The Inheritance Act

159. Sections 139-140 of the Inheritance Act (*Zakon o nasljeđivanju*, Official Gazette nos. 48/03, 163/03 and 35/05), which has been in force since 3 October 2003, regulate heirs' liability for the debts of the deceased. In particular, section 140 provides for the so-called separation of patrimonies (*separatio bonorum*), that is, an instrument for the protection of creditors allowing those creditors of the deceased who have a good reason to fear that their claims will not be met, to demand that the estate be separated from the property of the heirs until the claims of those creditors are paid out of the estate. The rationale behind separation of patrimonies is to prevent that the property forming the estate be confounded with the property of the heirs, and thus to shield it from the claims of the heirs' creditors who would otherwise be entitled to satisfy their claims out of the estate. Those provisions read as follows:

III. HEIRS' LIABILITY FOR THE DEBTS OF THE DECEASED

The extent of heirs' liability for the debts

Section 139

"(1) Heirs shall be liable for the debts of the deceased.

(2) ...

(3) An heir is liable for the debts of the deceased up to the value of the inherited property ...

(4) Where there are several heirs they shall be jointly and severally liable for the debts of the deceased and so each up to the value of his or her share ...

(5) Between heirs the debts shall be distributed in proportion to their respective shares, unless the testament stipulates otherwise."

Separation of patrimonies

Section 140

(1) Creditors of the deceased may within three months from the opening of the succession demand that the estate be separated from the property of the heirs if they make plausible the existence of their claim and the risk that without the separation they would not be able to satisfy their claim.

(2) In that case heirs cannot dispose of [the assets] belonging to the estate, nor can their creditors satisfy their claims before the creditors who demanded separation satisfy theirs.

(3) Creditors of the deceased who demanded separation may satisfy their claims only from the funds of the estate.

(4) ...

(5) ...

(6) Creditors who demanded separation but do not have an enforcement title or have not yet instituted proceedings to pursue their claims, must institute [such] proceedings ... within the time-limit set forth by the court in the decision on separation of patrimonies. If [such] creditor does not [do so] within that time-limit, the court shall of its own motion set aside its decision on separation of patrimonies.

(7) The court shall decide on the creditor's application [for separation of patrimonies] by a decision in inheritance proceedings. An appeal against that decision does not suspend its execution."

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION

160. The applicant bank complained that the enforcement proceedings, which resulted in the seizure of a substantial amount of money from its account (see paragraphs 20-68 above, hereafter: "the enforcement proceedings"), had given rise to several violations of its rights under Article 6 § 1 of the Convention. The applicant bank's complaints under that Article were focused primarily to the part of those enforcement proceedings concerning the so-called third attempt to continue the enforcement (see paragraphs 42-66 above), and in particular to the decision of 3 October 2003 (see paragraphs 44-45 above) and the instruction of 28 October 2003 (see paragraph 61 above). Article 6 § 1 of the Convention reads as follows:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

161. The applicant bank first complained that the High Commercial Court in those enforcement proceedings had lacked impartiality. In particular, the bank complained that the High Commercial Court was not impartial, having regard to: (a) the statements made by Judge N.Š. to the media on 6 November 2003 and 24 March 2006 (see paragraphs 67-68 above), (b) the participation of Judge R.S. (whose withdrawal had been requested but never dealt with) and Judge K.M. (who was an uncle of one of Retag's shareholders, Mr B.P.) in the panel which on 6 April 2004 dismissed the applicant bank's appeal of 14 October 2003 against the first-instance decision of 3 October 2003 (see paragraphs 46 and 51 above).

162. The applicant bank further complained that in the enforcement proceedings in question it had not had an opportunity to comment on FINA's calculation of statutory default interest of 27 October 2003 (see paragraphs 58-60 above), which that court merely deferred to and applied without any further examination.

163. The Government contested these arguments.

164. The applicant bank also complained that in the enforcement proceedings at issue it had not been given proper notice of the hearing held on 23 September 2003 (see paragraphs 42-43 above) and thus had not had an opportunity to comment on the Commercial Court's qualification of the founding agreement as non-commercial (see paragraph 45 above). Lastly, it complained of the Constitutional Court's decision of 7 July 2005 whereby that court had refused to examine the merits of its constitutional complaint of 2 June 2004 (see paragraphs 52 and 55 above). Even though the applicant bank in raising the latter complaint relied on Article 13 of the Convention taken in conjunction with Article 1 of Protocol No. 1 thereto, the Court considers that it falls to be examined under Article 6 § 1 of the Convention as an access-to-court complaint.

A. Admissibility

1. Alleged violation of Article 6 § 1 of the Convention on account of the lack of impartiality

(a) The parties' submissions

(i) The Government

165. The Government disputed the admissibility of this complaint by arguing that it was manifestly ill-founded.

166. They first submitted that in the enforcement proceedings the applicant bank had sought the withdrawal of all first-instance judges who had dealt with its case, two presidents of the High Commercial Court, and the President and Vice-President of the Supreme Court. Furthermore, from 1998 onwards the applicant bank had regularly sought the withdrawal of all judges of the High Commercial Court who had been delivering decisions the applicant bank had not been satisfied with. In each appeal lodged after February 1998, the applicant bank had routinely sought the withdrawal of four judges of the High Commercial Court, in particular judges J.Č., L.Ć, Z.J. and R.S., as well as the withdrawal of Judge N.Š. from his role of president, and later on a judge of that court. Most of those motions for withdrawal had not contained any reasons whatsoever. Where reasons had been given it had been clear that the withdrawal had been sought because of the applicant bank's dissatisfaction with the decisions rendered by those judges and their legal views. In not a single case had the applicant bank adduced arguments to demonstrate subjective or objective partiality on the part of any of the judges concerned. The domestic courts had,

notwithstanding, decided on all the withdrawal motions made by the applicant bank. Accordingly, when assessing the impartiality of the High Commercial Court it had to be taken into account that the applicant bank had exercised its right to seek the withdrawal of judges on account of their alleged bias in an extremely non-selective way, and thereby *a priori* seriously weakened the well-foundedness of those motions.

167. As to the statement given by Judge N.Š. on 6 November 2003 in *Novi list* (see paragraph 67 above), the Government first submitted that the newspaper article in question was not an interview with him but a journalistic commentary, in which it was not possible to distinguish his statements from the views of the author(s) of the article. More importantly, the Government noted that the applicant bank, although regularly requesting his withdrawal, had never argued that his withdrawal had been sought because of those statements. In particular, in the withdrawal motion of 2 December 2003 (see paragraph 63 above), which had been submitted after the publication of the article in question, where the applicant bank sought, as a matter of routine, the withdrawal of Judge N.Š. and three other judges, his statement to the press was not mentioned at all as an argument for withdrawal. What is more, at the time he had given the impugned statement, Judge N.Š. was no longer the President of the High Commercial Court (see paragraph 67 above), nor was he after that a member of any panel of the High Commercial Court which rendered any of the decisions in the applicant bank's case. Consequently, after the statement published in *Novi list*, Judge N.Š. could not have in any way influenced the outcome of the applicant bank's case. For the same reasons the Government argued that the statements made by Judge N.Š. during the programme broadcast by Croatian Television on 24 March 2006 had been irrelevant to the applicant bank's case.

168. As regards the participation of Judge R.S. in the panel of the High Commercial Court which on 6 April 2004 decided on the applicant bank's appeal of 14 October 2003, the Government noted that the President of the High Commercial Court had previously, on 12 May 1998 and 2 May 2000, dismissed two motions for the withdrawal of Judge R.S. Because in the third motion for his withdrawal, that of 14 October 2003 (see paragraph 46 above), the applicant bank had not advanced any new arguments which could have cast doubt on his impartiality, on 8 December 2003 the President of the Zagreb Commercial Court had declared that motion inadmissible (see paragraph 50 above) in accordance with the relevant provisions of the Civil Procedure Act (see paragraph 145 above). Thus, on 6 April 2004 when the panel of the High Commercial Court had decided on the applicant bank's appeal of 14 October 2003, all motions for his withdrawal had already been dealt with. Accordingly, his participation in the panel which dismissed that appeal could not have violated the applicant bank's right to an impartial tribunal.

(ii) The applicant bank

169. The applicant bank submitted that while the appellate proceedings set in motion by its appeal of 14 October 2003 had been pending, a judge and former president of the High Commercial Court, N.Š., had been extensively quoted in a newspaper article published on 6 November 2003 in the daily newspaper *Novi list*. His comments had been injudicious and intensely hostile to the applicant bank. In particular, he had stated that the principal amount of the debt the applicant bank owed to Retag was DEM 56,000,000 (see paragraph 67 above), a figure for which there had been no foundation in the original judgment of 7 June 1995, writ of execution or any other document. For the applicant bank it was not a coincidence that the decision of the High Commercial Court of 6 April 2004 to dismiss the applicant bank's appeal of 14 October 2003 had referred to a figure of DEM 56,000,000 as equivalent to the principal amount owed (see paragraph 51 above). That highly prejudicial and unfounded allegation and its similarity to that previously made by Judge N.Š. in the media cast doubt on the impartiality of the High Commercial Court. In the applicant bank's view the Government had not answered the substance of its complaint, that the statement made by Judge N.Š. in the article of 6 November 2003 had given rise to a real possibility of bias. The applicant bank explained that its complaint had not been that he should have been required to withdraw because of the contents of the article, but that the similarity of the reasoning of the High Commercial Court, in a decision subsequent to his prejudicial and unfounded allegations, had given rise to real doubts about that court's impartiality as an institution when it had on 6 April 2004 ruled on the applicant bank's appeal.

170. The applicant bank further submitted that the evidence that the High Commercial Court had not been impartial had been powerfully reinforced by an interview given by Judge N.Š. on the Croatian Television programme 'Kontraplan' broadcast on 24 March 2006 (see paragraph 68 above). In that interview he had shown deep-rooted hostility to the applicant bank, and had also repeatedly denied that he had ever participated in the rendering of any decision in the case.

171. Furthermore, in its appeal of 14 October 2003 the applicant bank had also requested that Judge R.S. withdraw because it had lodged a criminal complaint against him and because he had previously been involved in decision-making in the case (see paragraph 46 above). However, the applicant bank's motion had never been dealt with. Instead, that judge had eventually sat in the panel of three judges of the High Commercial Court which had delivered the decision of 6 April 2004 dismissing the applicant bank's appeal (see paragraph 51 above).

172. Lastly, during the 'Kontraplan' programme Judge N.Š. had admitted that Judge K.M. was a close relative (an uncle) of Mr B.P. who, as a testamentary heir, had become one of Retag's shareholders after the death of that company's sole shareholder Mr A.K., and hence the recipient of a large part of the HRK 168,618,419.60 seized from the applicant bank. Judge

N.Š. had also admitted that he himself knew Mr B.P. (see paragraphs 68 and 85 above). The applicant bank submitted that it had been unaware of this connection between Judge K.M. and Mr B.P. at the time it lodged its application with the Court. Crucially, Judge K.M. had sat in the three-member panel of the High Commercial Court which had on 6 April 2004 dismissed the applicant bank's appeal (another of the three had been Judge R.S.). The applicant bank considered it highly significant that its complaint of a lack of impartiality had been subsequently corroborated by the connection between Judge K.M. and Mr B.P.

(b) The Court's assessment

173. The Court first reiterates that applicant bank called into question impartiality of the High Commercial Court in the enforcement proceedings on three counts (see paragraph 161 above): (a) the media statements of Judge N.Š. (see paragraphs 67-68 and 169-170 above), (b) the participation of Judge R.S. (whose withdrawal had been requested but allegedly never dealt with) in the panel which on 6 April 2004 dismissed the applicant bank's appeal of 14 October 2003 against the first-instance decision of 3 October 2003 (see paragraphs 46, 51 and 171 above) and (c) the participation of Judge K.M. (who was an uncle of one of Retag's shareholders, Mr B.P.) in the same panel (see paragraphs 46, 51, 68 and 172 above).

(i) As regards the media statements of Judge N.Š.

174. As regards the statements of Judge N.Š. to the media, in particular those given to the daily newspaper *Novi list* on 6 November 2003 (see paragraph 67 above) and those made in the 'Kontraplan' television programme on 24 March 2006 (see paragraph 68 above), the Court first notes that he was not involved in rendering or reviewing (on appeal) either of the two key decisions in the enforcement proceedings which led to the seizure of the substantial amount of money from the applicant bank's account, namely the decision of 3 October 2003 (see paragraph 44 above) and the instruction of 28 October 2003 (see paragraph 61 above). The only decisions rendered with the participation of Judge N.Š. were the decisions of the High Commercial Court of 16 May 2000 whereby that court: (a) allowed Retag's appeal and reversed the first-instance decision by dismissing the applicant bank's motion for postponement of enforcement and (b) dismissed the applicant bank's appeal against the Commercial Court's decision of 11 January 2000 (see paragraph 37 above). However, those decisions were overturned by the decisions of the Constitutional Court of 23 May and 13 December 2000 (see paragraphs 40-41 above).

175. The Court further notes that Judge N.Š. had been the president of the High Commercial Court in the period between 6 March 1995 and 6 March 2002 (see paragraph 67 above), that is before the above-mentioned two key decisions were rendered. It follows that he could not have influenced the final outcome of the enforcement proceedings in question.

(ii) As regards the participation of Judge R.S.

176. As regards the involvement of Judge R.S., the Court first notes that the Government submitted a copy of the decision of the Zagreb Commercial Court President of 8 December 2003 declaring the applicant bank's motion for withdrawal of, among others, Judge R.S. inadmissible, because on 2 May 2000 the High Commercial Court had already dismissed a similar motion for withdrawal of the same judge (see paragraph 50 above). In these circumstances the Court is unable to accept the applicant bank's argument that its motion for withdrawal of Judge R.S. had never been dealt with.

177. The Court further reiterates that, according to its constant case-law, the existence of impartiality for the purposes of Article 6 § 1 must be determined according to a subjective test where regard must be had to the personal conviction and behaviour of a particular judge, that is, whether the judge held any personal prejudice or bias in a given case; and also according to an objective test, that is to say by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality (see, for example, *Parlov-Tkalčić v. Croatia*, no. 24810/06, § 78, 22 December 2009).

178. The Court notes in this connection that in seeking withdrawal of Judge R.S. the applicant bank confined itself to stating that he had been previously involved in decision-making in the case and that it had lodged several criminal complaints against him, without substantiating further this request (see paragraph 46 above). The applicant bank did not do so even when raising its impartiality complaint in the proceedings before the Court (see paragraphs 161 and 169-172 above), thus leaving the impression that it considered the mere fact that the judge in question had previously sat in the case or that it had brought criminal charges against him, sufficient to cast doubt on his impartiality. However, the Court has already held that the obligation to be impartial could not be construed so as to prevent judges from sitting in the same case upon remittal (see, for example, *Stow and Gai v. Portugal* (dec.), no. 18306/04, 4 October 2005; *Thomann v. Switzerland*, 10 June 1996, §§ 35-37, *Reports of Judgments and Decisions* 1996-III; and *Ringeisen v. Austria*, 16 July 1971, § 97, Series A no. 13). Likewise, bringing criminal charges against judges is not in itself sufficient to cast doubt on their impartiality (see *Tanner and Malminen v. Finland* (dec.), no. 42114/98 42185/98, 26 February 2002). That is so because to require their automatic withdrawal in such circumstances would enable discontented litigants to engage in 'judge shopping' by artificially creating bias or prejudice and thus provide them with an easy instrument to remove judges whom they consider unfavourable simply because they ruled against them or otherwise seemed inclined to do so.

179. That being so, the Court considers that the applicant bank's fears as regards the lack of impartiality of Judge R.S. were not objectively justified. Moreover, since there is no evidence of personal bias on his part, the Court does not find that his involvement in the enforcement proceedings

conflicted with the applicant bank's right to have its "civil rights and obligations" determined by an impartial tribunal.

(iii) As regards the participation of Judge K.M.

180. As regards the participation of Judge K.M., the Court notes that Judge K.M.'s connection to Mr B.P. was revealed by Judge N.Š. on 24 March 2006 in the 'Kontraplan' television programme, whereas the applicant bank complained before the Court about the involvement of Judge K.M. for the first time on 31 July 2008 in its observations in response to those of the Government. This was more than six months after the programme in question was broadcast. In this connection the Court reiterates that, even though no plea of inadmissibility concerning compliance with the six-month rule was made by the Government in their observations, it is not open to it to set aside the application of the six-month rule solely because a government has not made a preliminary objection to that effect (see *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I). This is so because the six-month rule, in reflecting the wish of the Contracting Parties to prevent past decisions being called into question after an indefinite lapse of time, serves the interests not only of the respondent Government but also of legal certainty as a value in itself. The rule marks out the temporal limits of supervision carried out by the organs of the Convention, and signals to both individuals and State authorities the period beyond which such supervision is no longer possible (see *Walker*, cited above).

(iv) Conclusion

181. It follows that, in so far as the applicant bank's complaint of lack of impartiality concerns the involvement of Judges N.Š. and R.S., it is inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 thereof. On the other hand, to the extent that this complaint concerns the involvement of Judge K.M., it is inadmissible under Article 35 § 1 of the Convention for non-compliance with the six-month rule, and must likewise be rejected pursuant to Article 35 § 4 thereof.

2. The alleged non-communication of FINA's calculation of statutory default interest

182. 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.

3. Other alleged violations of Article 6 § 1 of the Convention

183. As to the alleged failure to give proper notice of the hearing held on 23 September 2003 and the related alleged lack of opportunity to comment

on the Commercial Court's qualification of the founding agreement as non-commercial as well as the refusal of the Constitutional Court to examine the merits of the applicant bank's constitutional complaint of 2 June 2004, the Court, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, considers that the present case does not disclose any appearance of a violation of Article 6 § 1 or any other Article of the Convention or its Protocols.

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

B. Merits

1. The parties' submissions

(a) The Government

185. The Government first stressed that the actions of the domestic courts in the present case should be viewed in the context of the main task the courts have in enforcement proceedings, that is, to enable the execution of final judgments without unjustified delays.

186. They further argued that in order to assess whether the service of calculation of interest compiled by FINA to the applicant bank had been necessary to respect the principle of adversarial proceedings two elements needed to be taken into consideration: (a) what kind of influence that calculation had had on the final outcome of the proceedings, and (b) whether the calculation had been served on the opposing party.

187. As regards the first element, the decision of 3 October 2003 had, in the Government's view, clearly and precisely established the methods of calculating the interest owed by the applicant bank and contained all the indispensable parameters for doing so. That decision had been reached in the enforcement proceedings – which had continued in 2003 following the quashing decision of the Constitutional Court – after the parties had been given the opportunity of presenting their arguments, including those concerning the rate and methods of calculating interest. They had done so in several comprehensive submissions. Each party had had the opportunity of responding to the allegations of the other. The Zagreb Commercial Court had given detailed reasons for its decision, in which it had referred to all the key arguments of both parties and had clearly explained its legal view on the rate and methods of calculating interest. The decision had been served on both parties and they had been given the opportunity to appeal against it, of which they had availed themselves. As a result, the decision had been examined by the High Commercial Court and upheld. On the other hand, the technical issue of calculation of interest had been, in accordance with standard practice, conferred on the institution which performed payment operations, namely the Croatian National Bank. This was so because the interest was calculated up to the day of payment, for which reason the

institution authorised to carry out payment operations must be able to calculate interest up to the moment when the transfer of funds takes place. In the present case, since the Croatian National Bank had not had the information on interest rates on savings deposits in the period between 15 September 1986 and 6 October 1989, the Zagreb Commercial Court had deviated from the standard procedure only in as far as it had conferred the calculation of interest on the institution which had been responsible for payment operations in that period, that is to say to FINA. Accordingly, the Government argued, the calculation of interest compiled by FINA had not been decisive for the outcome of proceedings, since all the parameters for that calculation had been established previously in the Zagreb Commercial Court's decision of 3 October 2003.

188. As regards the second element, the Government noted that neither the instruction of 28 October 2003 by which the Zagreb Commercial Court had decided to entrust the calculation of interest to FINA, nor the calculation eventually prepared by that institution, had been served on either the applicant or Retag. In the Government's view, this meant that both parties had been on an equal footing in the proceedings. They emphasised, referring to the case of *Perić v. Croatia* (no. 34499/06, 27 March 2008), that under the Court's case-law each party in a civil case must be afforded a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* their opponent. Thus, the decision of the Zagreb Commercial Court not to communicate FINA's calculation to the parties had represented an interpretation of the domestic procedural law that had had equal effects on both parties, which was essential for the observance of the adversarial principle.

189. Bearing the above in mind, the Government considered that by not serving the calculation of interest compiled by FINA on the applicant bank, the Zagreb Commercial Court had not, in the circumstances of the present case, breached the principle of adversarial proceedings. Therefore, the Government argued that there had been no violation of Article 6 § 1 in the present case.

(b) The applicant bank

190. In reply to the Government's arguments concerning the role of courts in enforcement proceedings, the applicant bank submitted that their task in enforcement (or any other) proceedings was to safeguard the rights and interests of both parties and not only those of the one to whose benefit the judgment to be enforced had been rendered.

191. The applicant bank also disagreed with the Government's contention that the Zagreb Commercial Court's decision of 3 October 2003 had clearly and precisely established the methods of calculating the interest and had contained all the necessary parameters for doing so, for which reason, according to the Government, the calculation performed by FINA had not been decisive for the outcome of the proceedings (see paragraph 187 above). On the contrary, in the applicant bank's view that

decision was imprecise and insufficiently clear, because it did not: (a) specify the bank whose rates were to be applied for calculating the interest in the period between 15 September 1986 and 6 October 1989, and (b) specify the method of calculation to be applied for that period, that is, specify whether the calculation in that period should be made taking into account the nominal amounts of the principal debt or whether it should be the principal amount together with the interest added, and if the latter was the case for what period the interest should be added.

192. As regards the calculation performed by FINA, the applicant bank submitted that in their view FINA had made the following errors: (a) it had applied the compound rather than the simple method of calculating interest, as well as revaluation rates in addition to default interest rates, for the period prior to 6 October 1989, which was not provided either in the decision of 3 October 2003 or the relevant legislation applicable in that period, (b) it had applied unknown interest rates on time savings deposits the origin of which had not been explained. The applicant bank further explained that the compound method of calculating the interest for the period before 6 October 1989 had been the primary cause of the significant difference between the total amount calculated by FINA (HRK 37,915.96) and the total amount calculated by the applicant bank's financial expert for that period (HRK 3,192.20). The difference between these two sums had magnified greatly over the subsequent years owing to the statutory default interest payable in the period after 6 October 1989. Moreover, it appeared from FINA's calculation that interest had been added on the "revalued" principal sum and further interest rates applied to the resulting sum each time the interest rates changed in the period before 6 October 1989.

193. For these reasons, the applicant bank considered that FINA's calculation should have been served on it and that it should have been given an opportunity to challenge the accuracy of that calculation.

194. As regards the Government's argument that the failure of the Zagreb Commercial Court to give the applicant bank an opportunity to comment on FINA's calculation had not rendered the proceedings unfair, because Retag had not been given such an opportunity either (see paragraph 188 above), the applicant bank replied that this argument implied that the Government considered the proceedings fair because they were equally unfair to both parties, which was absurd. However, even if that conclusion was correct, the fact remained that the failure to serve FINA's calculation on the applicant bank had been to its detriment because it had been the only party adversely affected by the erroneous calculation.

195. In sum, the applicant bank considered that the failure of the Zagreb Commercial Court to provide it with FINA's calculation of the statutory default interest before adopting the instruction of 28 October 2003, coupled with the impossibility of an appeal against that instruction, had deprived it of any opportunity to dispute the accuracy of that calculation, which rendered the proceedings unfair.

2. The Court's assessment

196. The Court first reiterates that the principle of equality of arms, which is one of the elements of the broader concept of a fair hearing, requires each party to be given a reasonable opportunity to present its case under conditions that do not place it at a substantial disadvantage *vis-à-vis* its opponent (see, among many other authorities, *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274, and *Ankerl v. Switzerland*, 23 October 1996, § 38, *Reports* 1996-V). In the present case it is undisputed that FINA's calculation of the statutory default interest was not communicated to either of the parties to the enforcement proceedings. Accordingly, the Court finds that the principle of equality of arms has not been breached in the present case (see, for example and *mutatis mutandis*, *Nideröst-Huber v. Switzerland*, 18 February 1997, § 23, *Reports* 1997-I, and *Krčmář and Others v. the Czech Republic*, no. 35376/97, § 39, 3 March 2000).

197. However, the Court further reiterates that the concept of a fair hearing also implies the right to adversarial proceedings. That right means that parties to criminal or civil proceedings must in principle have the opportunity not only to make known any evidence needed for their claims to succeed, but also to have knowledge of, and comment on, all evidence adduced or observations submitted, with a view to influencing the court's decision (see, for example, *Lobo Machado v. Portugal*, 20 February 1996, § 31, *Reports* 1996-I; *Vermeulen v. Belgium*, 20 February 1996, § 33, *Reports* 1996-I; and *Krčmář and Others*, cited above, § 40). This position is not altered when the observations are neutral on the issue to be decided by the court or, in the opinion of the court concerned, they do not present any fact or argument which has not already appeared in the impugned decision (see *Kukkonen v. Finland*, no. 57793/00, § 20, 7 June 2007, and *Sharomov v. Russia*, no. 8927/02, § 44, 15 January 2009).

198. The Court notes that the present case concerns enforcement proceedings in which the main issue was the exact calculation of the statutory default interest on the principal sum the applicant bank had been ordered to pay in the preceding civil proceedings. This led to difficulties because enforcement proceedings – which are by their nature non-contentious and whose primary purpose is to secure the effective execution of the judgment debt – are neither designated nor properly equipped with procedural tools and safeguards for a thorough and adversarial examination of such complex issues.

199. The Court is therefore mindful of the Government's argument that the actions of the domestic courts in the present case should be viewed in the context of the main task of the courts in enforcement proceedings, that is to enable the execution of final judgments without unjustified delays. As its case-law bears out, the Court attaches great importance to that objective. It has consistently held that the State has an obligation to set up a system of enforcement of judgments that is effective both in law and in practice and ensures their enforcement without any undue delay (see, for example,

Fuklev v. Ukraine, no. 71186/01, § 84, 7 June 2005, and *Mužević v. Croatia*, no. 39299/02, § 83, 16 November 2006).

200. Bearing in mind that the principal aim of enforcement proceedings is to secure prompt execution of a judgment without further extensive debate on the law and facts, and given that the enforcement proceedings in the present case had been pending since 15 January 1996, the Court understands that the Zagreb Commercial Court might have considered that, instead of communicating FINA's calculation to the applicant bank, forsaking the strict observance of the adversarial principle and bringing those proceedings to an end as soon as possible was more appropriate in the circumstances. It might also have considered this to be an appropriate course of action because of the applicant bank's behaviour in the proceedings, in particular its numerous dilatory manoeuvres (multiple motions for withdrawal of judges and postponement of enforcement) aimed at delaying the enforcement.

201. As already noted above, the Court attaches great importance to securing enforcement of judgments without undue delay, which, however, does not justify disregarding such a fundamental principle as the right to adversarial proceedings because, as rightly pointed out by the applicant bank (see paragraph 190 above), Article 6 § 1 is intended above all to secure the interests of the parties and those of the proper administration of justice (see *Nideröst-Huber*, cited above, § 30; *Beer v. Austria*, no. 30428/96, § 18, 6 February 2001; and *Švenčionienė v. Lithuania*, no. 37259/04, § 26, 25 November 2008). The Court notes that FINA's calculation of the statutory default interest, which was prepared at the request of the Zagreb Commercial Court, was manifestly aimed at influencing that court's decision (see, *mutatis mutandis*, *Nideröst-Huber*, cited above, § 26; and *Krčmář and Others*, cited above, § 41). Therefore, in the Court's view, the Zagreb Commercial Court should have more carefully balanced the principle of expeditious hearing with the principle of adversarial hearing in the present case. As already noted above (see paragraph 198), the main issue in the case was the calculation of statutory default interest, over which a dispute arose only in the enforcement proceedings, *de facto* transforming them from the proceedings for mere execution of a judgment into the second phase of litigation. In such specific circumstances the Zagreb Commercial Court could have been expected to strictly observe the principle of adversarial hearing and give the applicant bank an opportunity to comment on the calculation made by FINA.

202. Contrary to the Government's view (see paragraph 187 above), the Court considers that the exact calculation of the statutory default interest in the present case was not a mere technical issue as it is in other circumstances (*judex non calculat*). It was therefore of paramount importance to give the applicant bank an opportunity to comment on that calculation (see, *mutatis mutandis*, *Krčmář and Others*, ibid.). Indeed, to do so was even more compelling in view of the aggravating fact that no appeal lay against the Zagreb Commercial Court's instruction of 28 October 2003

ordering the Croatian National Bank to transfer from the applicant bank's account to Retag's account the amount calculated by FINA. However, FINA's calculation was never disclosed to the applicant bank, which thus had no opportunity to challenge the accuracy of that calculation.

203. Furthermore, the Court reiterates that it is for the parties to a dispute alone to say whether or not a document calls for their comment. What is particularly at stake here is the litigants' confidence in the workings of justice, which is based on, inter alia, the knowledge that they have had the opportunity to express their views on every document in the file (see, for example, *Nideröst-Huber*, cited above, § 29; *Beer,* ibid.; *F.R. v. Switzerland*, no. 37292/97, § 40, 28 June 2001; and *Pellegrini v. Italy*, no. 30882/96, § 45, ECHR 2001-VIII). Thus they may legitimately expect to be consulted as to whether a specific document requires their comments (see *Krčmář and Others*, cited above, § 43). It follows that in the present case it was for the applicant bank to assess whether FINA's calculation required its comments. The onus was therefore on the Zagreb Commercial Court to afford the applicant bank an opportunity to comment on that calculation prior to that court's instruction of 28 October 2003 (see, *mutatis mutandis*, *K.S. v. Finland*, no. 29346/95, § 23, 31 May 2001, and *S.H. v. Finland*, no. 28301/03, § 35, 29 July 2008).

204. Having regard to the requirements of the principle of adversarial hearing guaranteed by Article 6 § 1 of the Convention and to the role of appearances in determining whether those requirements have been complied with (see *Komanický v. Slovakia*, no. 32106/96, § 55, 4 June 2002), the Court finds that in the present case FINA's calculation of statutory default interest should have been communicated to the applicant bank and the bank given the opportunity to comment on that calculation.

205. Given that FINA's calculation was never communicated to the applicant bank, the foregoing considerations are sufficient to enable the Court to conclude that the right of the applicant bank to an adversarial hearing was not respected in the enforcement proceedings in question.

There has accordingly been a violation of Article 6 § 1 in the present case.

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

206. The applicant bank complained that the enforcement proceedings (see paragraphs 20-68) and the bankruptcy proceedings against Retag (see paragraphs 69-87 above, hereafter: "the bankruptcy proceedings") had entailed several violations of its right to peacefully enjoy its possessions. The applicant bank alleged that the State had breached both its negative and positive (procedural) obligations under 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."

207. The applicant bank primarily complained of the failure on the part of the domestic courts to postpone either the execution of the decision of 3 October 2003 or the instruction of 28 October 2003 in the enforcement proceedings, or the distribution of Retag's bankruptcy estate in the bankruptcy proceedings.

208. In the alternative, that is, if the Court were to find no violation of Article 1 of Protocol No. 1 to the Convention on that account, the applicant bank complained that the seizure of HRK 168,618,419.60 from its account in the enforcement proceedings was unlawful and excessive and thus in breach of that Article.

209. Lastly, and irrespective of the two preceding complaints under the same Article, the applicant bank complained that the State had failed to discharge its positive (procedural) obligations under Article 1 of Protocol No. 1 to the Convention because: (a) the seizure of a substantial amount of money from its account had resulted from the enforcement proceedings being beset by procedural errors which therefore had not offered the necessary procedural guarantees enabling the domestic courts to adjudicate the case effectively and fairly, and (b) the Croatian legal system taken as a whole had failed to set up a mechanism that would enable the bank to recover the sum seized from it in the enforcement proceedings, which seizure eventually proved to be without legal basis.

210. The Government contested these arguments by disputing the admissibility of these complaints on three grounds. They argued that the applicant bank could not claim to be a victim of a breach of positive obligations under Article 1 of Protocol No. 1 to the Convention, that it had failed to exhaust domestic remedies, and that in any event the bank's complaints were manifestly ill-founded.

1. The applicant bank's victim status

(a) The parties' submissions

211. The Government first submitted that the applicant bank could not claim to be a victim of the alleged breach of the State's positive obligations under Article 1 of Protocol No. 1 to the Convention. They argued that under the Court's case-law only a person seeking enforcement of a final judgment, and not a person against whom enforcement was sought, could claim to be a victim of a violation of a positive obligation under that Article. That was so because the State owed a positive obligation only to persons with claims recognised by a final judgment or otherwise sufficiently established to attract the guarantees of Article 1 of Protocol No. 1, because only such

claims constituted "possessions" within the meaning of that Article. The positive (procedural) obligation to afford judicial procedures that offer the necessary procedural guarantees and therefore enable the domestic courts and tribunals to adjudicate effectively and fairly any disputes between private individuals, enunciated in the case of *Sovtransavto Holding v. Ukraine* (no. 48553/99, § 96, ECHR 2002-VII), in the Government's view related only to situations where there was a dispute over particular property, and not to enforcement proceedings which followed the final determination of such a dispute in preceding civil proceedings. The debtor in the enforcement proceedings undoubtedly had certain rights protected by the Convention, in particular by its Article 6, but those rights were beyond the scope of Article 1 of Protocol No. 1 thereto.

212. The applicant bank replied that from the Court's case-law it obviously did not follow that a judgment debtor against whom judgment is enforced in an arbitrary, unfair and uncertain fashion could not claim to be a victim of a breach of a positive obligation under Article 1 of Protocol No. 1 to the Convention.

(b) The Court's assessment

213. The Court reiterates that in the case of *Zehentner v. Austria* (no. 20082/02, §§ 73-79, 16 July 2009) it found a breach of the State's positive (procedural) obligation under Article 1 of Protocol No. 1 to the Convention on account of lack of procedural safeguards in enforcement proceedings against a debtor lacking legal capacity. Accordingly, the Government's objection regarding the applicant bank's victim status must be rejected.

2. Non-exhaustion of domestic remedies

(a) The parties' submissions

(i) The Government

214. The Government submitted that one of the applicant bank's main arguments in claiming that its property rights had been violated in the enforcement proceedings was that the enforcement to the benefit of Retag had been inadmissible under the domestic law. In this connection the Government pointed out that on 11 November 2003 the applicant bank had instituted civil proceedings before the Karlovac Commercial Court against Retag, asking the court to declare the enforcement inadmissible (see paragraph 113 above). In so doing the applicant bank had in essence raised the same complaints as in its application to the Court. Given that those proceedings were still pending and that the final judgment on the admissibility of the enforcement was of key significance for the determination of whether the applicant bank's complaints under Article 1 of Protocol No. 1 to the Convention were well-founded, the Government invited the Court to declare these complaints inadmissible as premature.

215. Furthermore, the Government noted that the applicant bank had also, on 22 December 2004, brought a civil action for unjust enrichment against Retag in the Karlovac Commercial Court (see paragraph 106 above), seeking to recover the sum seized from it a year earlier in the enforcement proceedings. The fact that Retag had later on, on 12 December 2007, been deleted from the register of commercial companies (see paragraph 87 above) did not prevent the determination of the applicant bank's claim in those proceedings, because the proceedings could continue against "the bankruptcy estate of Retag", which had standing to sue and be sued (*jus standi in judicio*) under the domestic law (see paragraphs 155-156 above). Accordingly, if the applicant bank succeeded in those civil proceedings, it would be able to recover the funds seized from it on 22 December 2003 from Retag's bankruptcy estate. In addition, given that during the final distribution of Retag's bankruptcy estate the surplus left after the satisfaction of the creditors had been distributed to that company's shareholders (see paragraph 85 above), it would also be possible for the applicant bank to bring a civil action against the shareholders, relying on section 10 of the Commercial Companies Act (see paragraph 157 above).

216. The Government also pointed out that the applicant bank had failed to report its claim for restitution of the sum seized from it on 22 December 2003 to the bankruptcy administrator in the bankruptcy proceedings against Retag within the time-limits provided for bankruptcy creditors (*stečajni vjerovnici*), that is, at the latest within three months following the first verification hearing (see paragraph 151 above). Reporting that claim was a legal remedy which would have enabled the bankruptcy court to decide on it, reserve the corresponding funds and deposit them on a separate account (see paragraph 155 above) pending the outcome of the proceedings for unjust enrichment instituted by the applicant bank. However, the applicant bank had not done so. The fact that the applicant bank had properly reported its claim for restitution of the sum seized from it on 12 February 1996 (see paragraph 25 and 70 above) and that the bankruptcy administrator had therefore reserved HRK 41,752,238.68 for that purpose (see paragraph 83 above), only proved that he would have reserved the amount corresponding to the sum seized on 22 December 2003 had the applicant bank properly reported that claim.

217. Lastly, in their update letter to the Court of 28 September 2012, the Government argued that the applicant bank could have brought a civil action for damages against the bankruptcy administrator, relying on section 28 of the Bankruptcy Act (see paragraph 148 above), had it considered him liable as suggested in the application. They particularly emphasised that under section 28(6) of the Bankruptcy Act bankruptcy administrators had been obliged to conclude a liability insurance contract at the very beginning of bankruptcy proceedings (see paragraph 148 above). However, the applicant bank had never brought such an action.

218. The Government therefore invited the Court to declare the applicant bank's complaint inadmissible for non-exhaustion of domestic remedies.

(ii) The applicant bank

219. The applicant bank replied, as regards its action to declare the enforcement inadmissible and its second action for unjust enrichment, that those remedies had been rendered futile at the moment Retag's bankruptcy estate (which consisted exclusively of the amount seized from the applicant bank on 22 December 2003) had been distributed in the above bankruptcy proceedings (see paragraph 85 above). After that moment there was no legal remedy available in the Croatian legal system which would enable it to recover the amount of HRK 168,618,419.60 seized from it on 22 December 2003. In particular, as regards the Government's suggestion that it was also possible for the applicant bank to bring a civil action against Retag's shareholders, relying on section 10 of the Commercial Companies Act, the applicant bank retorted that they had not provided any detail or authority to support that suggestion, which was an incorrect one. That was so because the shareholders and creditors of Retag had been paid from that company's estate pursuant to the final decisions of the bankruptcy court, against which the applicant bank had exhausted all available remedies. Thus, those persons who acquired some of Retag's bankruptcy estate had not made unlawful gains from the enforcement proceedings, though Retag had. The applicant bank further submitted that, even if that action had offered it any prospects of success (which it would not have), by so arguing, the Government had actually admitted that it would not be able to recover the entire sum seized from it on 22 December 2003 as it could not retrieve the part of that sum which had been distributed to Retag's creditors.

220. As regards the Government's argument that it had failed to properly report its claim for recovery of that amount, the applicant bank replied that under Croatian bankruptcy law it was in respect of that claim considered a creditor of the bankruptcy estate (*vjerovnik stečajne mase*), and those creditors were not required to report their claims within the time-limits prescribed for bankruptcy creditors (*stečajni vjerovnici*) (see paragraphs 149, 151 and 155 above), as the Government had suggested.

221. Finally, as regards the Government's suggestion that it could have sued the bankruptcy administrator for damages, the applicant bank replied that it had complained before the Court against the decisions of the domestic courts on the distribution of Retag's assets, and not against the bankruptcy administrator's distribution of those assets on the basis of those decisions.

(b) The Court's assessment

222. As regards the Government's argument that the applicant bank had failed to report its claim for recovery of HRK 168,618,419.60 in due time and in the manner prescribed by law (see paragraph 216 above), the Court notes that the claim in question arose on 22 December 2003, when that

amount was seized from the applicant bank in the enforcement proceedings, that is, after the opening of the bankruptcy proceedings against Retag on 21 June 2000. The Court further notes that under Croatian bankruptcy law claims generated after the opening of bankruptcy proceedings are considered obligations of the bankruptcy estate (*obveze stečajne mase*) and creditors having such claims are creditors of the bankruptcy estate (*vjerovnici stečajne mase*). According to the case-law of the Supreme Court and the High Commercial Court, creditors of the bankruptcy estate are, unlike bankruptcy creditors (*stečajni vjerovnici*, that is, creditors whose claims against the bankruptcy debtor arose before the opening of bankruptcy proceedings), not required to formally report their claims to the bankruptcy administrator (see paragraph 155 above). It follows that under the domestic law the applicant bank was not required to report its claim for restitution of HRK 168,618,419.60 to the bankruptcy administrator, let alone to do so within the time-limit envisaged for the bankruptcy creditors, as the Government suggested.

223. Naturally, the bankruptcy administrator and the bankruptcy court had to be made aware of the applicant bank's claim. Section 202 of the Bankruptcy Act provides that in order to be able to participate in the distribution of funds from the bankruptcy estate the bankruptcy administrator must learn of claims of creditors of the estate at the latest by the date of the relevant (interim or final) distribution hearing (see paragraph 155 above). In this connection the Court notes that on 22 December 2004, that is, exactly a year after the above sum was seized in the enforcement proceedings, the applicant bank brought a civil action for unjust enrichment in the Karlovac Commercial Court to recover that amount, and on the same day informed both the bankruptcy administrator and the bankruptcy judge thereof (see paragraphs 79 and 106 above). This was done the day before the Karlovac Commercial Court held the final distribution hearing (see paragraphs 78 and 80 above).

224. The Court further notes that from the decision of the Karlovac Commercial Court of 23 December 2004 and the decision of the High Commercial Court of 23 March 2005 it follows that the bankruptcy administrator and the bankruptcy judge were aware of the applicant bank's action brought on 22 December 2004 (see paragraphs 81-82 above). It also notes that under section 87a of the Bankruptcy Act the bankruptcy administrator has to ensure from the bankruptcy estate the funds necessary to settle the foreseeable obligations of the bankruptcy estate throughout the entire proceedings (see paragraph 155 above), and that the funds pertaining to the bankruptcy estate in the present case were distributed on 15 April and 16 May 2005 (see paragraph 85 above), that is some four to six months after the applicant bank had brought its civil action of 22 December 2004 and informed him and the bankruptcy judge thereof.

225. In any event, that is, even if the Government's argument that the applicant bank is in respect of its claim for restitution of HRK 168,618,419.60 to be seen as a bankruptcy creditor, the Court notes

that such creditors are under section 176(2) of the Bankruptcy Act required to report their claims at the latest within three months following the first verification hearing (see paragraph 151 above). The first verification hearing in the above bankruptcy proceedings against Retag was held on 30 November 2001 (see paragraph 71 above), which means that the time-limit in question expired on 28 February 2002. Given that the amount in question had been seized from the applicant bank in the enforcement proceedings on 22 December 2003, the Court does not see how the bank could have reported its claim for restitution of that amount to the bankruptcy administrator within that time-limit.

226. As regards the Government's argument that the complaint was premature because the civil proceedings to declare the enforcement inadmissible (see paragraphs 113-116 above) and the second civil proceedings for unjust enrichment (see paragraphs 106-112 above) instituted by the applicant bank were still pending before the domestic courts, and that the applicant bank would, if successful in those proceedings, be able to recover the funds seized from it on 22 December 2003 from the bankruptcy estate (see paragraph 215 above), the Court notes that apart from HRK 41,752,238.68 reserved to cover the applicant bank's claims stemming from the seizure of 12 February 1996, there were no other funds left in Retag's bankruptcy estate. In these circumstances, the Court does not see how the applicant bank could obtain restitution of the HRK 168,618,419.60 seized from it on 22 December 2003.

227. As to the Government's further suggestion that the applicant bank would in that case be able to bring a civil action against the shareholders of Retag who had received Retag's remaining (residual) assets (that is, surplus) left after satisfaction of the creditors, relying on section 10 of the Commercial Companies Act (see paragraph 215 above), which provides for the possibility of piercing the corporate veil, the Court notes that from the text of that provision it is not evident that it would be applicable to cases similar to that of the applicant bank. In these circumstances, the Court considers that it was incumbent on the respondent Government to provide examples of cases in which the provision in question had been applied by the courts in the manner they suggested. However, the Government failed to do so. In any event, even if the action based on section 10 of the Commercial Companies Act were to offer the applicant bank satisfactory chances of success, the bank would not be able to retrieve the entire sum seized from it on 22 December 2003 as it certainly would not be possible to recover the HRK 4,452,789.64 distributed to Retag's creditors.

228. As regards the Government's argument that the applicant bank should have brought a civil action for damages against the bankruptcy administrator (see paragraph 217 above), the Court notes that according to sections 192(2) and 193(1) of the Bankruptcy Act the final distribution may not be undertaken without the approval of the bankruptcy judge (see paragraph 155 above). In the present case the bankruptcy judge approved the final distribution by scheduling the final hearing (see paragraphs 73 and

78 above). By her decision of 23 December 2004 the bankruptcy judge dismissed the applicant bank's objection against the final distribution list prepared by the bankruptcy administrator (see paragraph 81 above), which decision was later upheld by the second-instance court (see paragraph 82 above). The Court also notes that the applicant bank's subsequent constitutional complaint was declared inadmissible (see paragraph 84 above). Given that according to section 28(2) of the Bankruptcy Act bankruptcy administrators may not be held liable for acts approved by a bankruptcy judge or by actions taken in the execution of an order or instruction of a bankruptcy judge (see paragraph 148 above), the Court considers that bringing an action for damages against the bankruptcy administrator would not in the circumstances of the present case have offered the applicant bank any prospects of success.

229. In view of the above, it follows that the Government's arguments as regards the non-exhaustion of domestic remedies must be rejected.

3. Whether the complaint is manifestly ill-founded

(a) The parties' submissions

(i) The Government

(α) As regards the refusal of the domestic courts to postpone either the enforcement itself or the distribution of Retag's bankruptcy estate

230. As regards the refusal to postpone the enforcement, the Government first submitted that grounds for postponing enforcement were clearly prescribed by law, in particular in section 63 of the 1978 Enforcement Procedure Act (see paragraph 146 above), and that the domestic courts postponed the enforcement several times during the enforcement proceedings in question, that is each time those grounds existed. By their decisions of 27 October 2003 and 6 April 2004 the Zagreb Commercial Court and the High Commercial Court had decided not to postpone the enforcement further because they had considered that none of the grounds for doing so had existed in the applicant bank's case (see paragraphs 49 and 51 above). In particular, the applicant bank's motion of 14 October 2003 for postponement of enforcement had been based on the argument that Retag's claim against it had been discharged by means of offset, which did not constitute a ground for postponing the enforcement (see paragraph 46 above). Moreover, the fact that those courts had instructed the applicant bank to institute separate civil proceedings for declaring enforcement inadmissible (see paragraph 49 above) had not represented a ground for postponing the enforcement either. Consequently, the Zagreb Commercial Court had proceeded with the enforcement.

231. As regards the refusal of the domestic courts to postpone the distribution of Retag's bankruptcy estate, the Government argued that there had been no grounds for doing so, because at the relevant time there had been no indication that the seizure of a substantial amount from the

applicant bank on 22 December 2003 had been without legal basis. As to the bankruptcy administrator's decision not to reserve the funds corresponding to the applicant bank's claim for restitution of that amount, the Government argued that he had not been obliged to do so, having regard in particular to the fact at the relevant time the first civil proceedings for unjust enrichment had ended with a final decision in the applicant bank's disfavour (see paragraphs 101-105 above). Lastly, the Government stressed that all the actions of the domestic courts in the bankruptcy proceedings against Retag had to be viewed in the light of the fact that bankruptcy proceedings were considered urgent, and that their purpose was collective settlement of obligations of the creditors of the bankruptcy debtor.

(β) As regards the seizure of a substantial amount of money from the applicant bank's account in the enforcement proceedings

232. The Government first argued that there had been no interference with the applicant bank's right to peacefully enjoy its possessions. The State's obligation under Article 1 of Protocol No. 1 to the Convention had in the present case been limited to ensuring enforcement of the original judgment in favour of Retag. Therefore, the enforcement proceedings complained of could not have resulted in an interference with the applicant bank's rights under the same Article.

233. The Government further argued that, in order to determine the degree of uncertainty to which the applicant bank had allegedly been exposed in the enforcement proceedings, it was necessary to determine whether the bank could have reasonably expected that its debt on the basis of the original judgment would eventually reach the level of the amount seized. In so doing the real value of the principal debt had to be taken into account. In that connection the Government noted that the principal amount the applicant bank had been ordered to pay corresponded to the establishment sum, that is, the amount Textil had in 1986 invested as a founder of the applicant bank, which was some eleven billion Yugoslav dinars (YUD) (see paragraph 8 above). That amount corresponded at the time to almost fifty-seven million German marks (DEM), which would today represent more than twenty-eight million euros (EUR). Therefore, even though the principal amount of YUD 11,000,000,000 had, after several denominations and changes of domestic currency (see paragraphs 140-142 above), been reduced to the apparently modest amount of 1,100 Croatian kunas (HRK), the applicant bank had been aware that in reality the amount it would have to pay would be many times higher. Bearing in mind that the purpose of the default interest was precisely to compensate the creditor for unauthorised use of his or her money, it had been reasonable to expect that the applicant bank would have to pay, due to the lapse of time, an amount in interest which would be nearly equal to the real value of the establishment sum.

234. The Government further submitted that a respectable bank such as the applicant bank was expected to meet its obligations established by final

judgments. Institution of enforcement proceedings for compulsory execution of a judgment should not have been the rule but an exception Therefore, the applicant bank could have, and should have, itself acted upon the original judgment, which had become final as early as 31 October 1995, and paid the judgment debt of its own motion. Instead, the applicant bank had decided to ignore the original judgment and had repeatedly delayed enforcement by using all possible legal means, and had thereby increased its debt. In so doing, the applicant bank must have been aware that the default interest was calculated up to the day of payment, and that therefore any delay in payment increased the total debt.

235. The Government emphasised that in the instant case the rate and method of calculation of the statutory default interest had been disputed only in respect of the period between 15 September 1986 and 6 October 1989. As regards the remaining period, up to the final payment, the relevant domestic legislation on interest rates had clearly prescribed applicable interest rates and the method of calculation. Therefore, the applicant bank, for the majority of the period during which the statutory default interest accrued, could not have been in any uncertainty as regards the amount or method of its calculation.

236. Moreover, as regards the period between 15 September 1986 and 6 October 1989 it was clear that by qualifying the founding agreement as non-commercial the domestic courts had applied a solution which was more favourable to the applicant bank, linking the statutory default interest rate to interest rates paid on savings deposits. In the Government's view, they could not speculate as to whether the Zagreb Commercial Court's decision of 3 October 2003 was correct. In any case, the legal views of that court had been within its power to interpret and apply the domestic law, and had been subject to a review by a higher court.

237. In conclusion, the Government maintained that the relevant legislation on the statutory default interest and its application by the domestic courts in the present case had not created such an uncertainty as regards the extent of the applicant bank's liabilities that would amount to a violation of Article 1 of Protocol 1 to the Convention.

(γ) As regards whether the State has fulfilled its positive obligations under Article 1 of Protocol No. 1 to the Convention

238. Lastly, the Government noted that the applicant bank had been ordered to pay the debt established by a *res judicata* court judgment. The applicant bank's claims had been decided by independent courts, without the influence of other branches of power. The existing legal system provided the necessary procedural guarantees which enabled the courts to adjudicate disputes between private individuals effectively and fairly. The applicant bank had been using, and continued to use, these procedural guarantees. Particular instruments used by the applicant bank were unsuccessful because the applicant bank failed to use them in the appropriate manner.

(ii) The applicant bank

(α) As regards the refusal of the domestic courts to postpone either the enforcement itself or the distribution of Retag's bankruptcy estate

239. The applicant bank argued that the refusal of the domestic courts to postpone either the enforcement or the distribution of Retag's bankruptcy estate had amounted to an interference with its right to peaceful enjoyment of its possessions where there had been no reasonable relationship of proportionality between the means employed and the aim sought to be realised by that interference, contrary to Article 1 of Protocol No. 1 to the Convention.

240. As regards the Government's argument that the discharge of Retag's claim against it through an offset had not been a ground for postponing enforcement under the domestic law (see paragraph 230 above), the applicant bank submitted that during the enforcement proceedings it had in fact submitted a number of motions for postponement of enforcement on a variety of grounds, including the non-existence of the assignment contract of 18 December 1995, of which offset was only one. In any event, if the Government's argument was that in circumstances such as those in which the applicant bank had found itself in 2003 Croatian law had not provided for postponement of enforcement, then the Government had recognised a major deficiency in the domestic law which would itself qualify as a breach of Article 1 of Protocol No. 1. In other words, either the domestic courts had breached that Article by failing to postpone enforcement or the Croatian law itself by failing to provide for such a possibility.

241. The applicant bank disagreed with the Government's argument that at the relevant time there had been no grounds to postpone the distribution of Retag's bankruptcy estate because there had been no indication that the seizure of a substantial amount from the bank on 22 December 2003 had been without legal basis (see paragraph 231 above). In the applicant bank's view, clear grounds for doing so had existed and ought to have been taken into consideration in terms of section 87a of the Bankruptcy Act (see paragraph 155 above). In particular, the bankruptcy administrator and the bankruptcy judge had been very well aware of the applicant bank's argument that Retag had not been entitled to seek enforcement of the original judgment, as that argument had already been raised by the applicant bank in the bankruptcy proceedings on 21 July 2000, when as a bankruptcy creditor it reported to the bankruptcy administrator its claim for restitution of the amount seized from it on 12 February 1996 and the statutory default interest accrued on that amount (see paragraph 70 above). In so doing the applicant bank had informed the bankruptcy administrator that it had instituted civil proceedings to challenge the validity of the assignment contract of 18 December 1995 on account of the fact that by that time Textil no longer existed as a legal entity, and enclosed therewith the extract from the register of commercial companies of 6 December 1999 showing that that company had been deleted from the register on 15 March 1994. The

likelihood that the applicant bank would succeed in those proceedings and that, consequently, the obligation of the bankruptcy estate to return the amount seized from the applicant bank on 22 December 2003 would arise could easily have been determined by reference to the above-mentioned extract from the register of commercial companies.

242. Lastly, the applicant bank argued that, contrary to the Government's argument, the bankruptcy administrator had been bound to reserve the amounts that corresponded to the claims of creditors of the bankruptcy estate pursuant to section 87a of the Bankruptcy Act (see paragraph 155 above).

(β) As regards the seizure of a substantial amount of money from the applicant bank's account in the enforcement proceedings

243. The applicant bank complained that the Zagreb Commercial Court's decision of 3 October 2003 (see paragraph 44 above) and the instruction of 28 October 2003 (see paragraph 61 above) adopted in the enforcement proceedings that had resulted in the seizure of HRK 168,618,419.60 from its account on 22 December 2003 had also constituted an interference with its right to peacefully enjoy its possessions. That interference had not been provided by law, within the meaning of Article 1 of Protocol No. 1 to the Convention, because the decision and the instruction in question had been contrary to the domestic law and arbitrary and their effects had been unforeseeable.

244. In that connection, the applicant bank first submitted that the decision of the Zagreb Commercial Court of 3 October 2003 ordering "continuation of enforcement" had not been in accordance with the domestic law because: (a) the Croatian law had not permitted an enforcement court to order the continuation of enforcement on a debtor's account when it had already been carried out, (b) that court had refused to rule on the applicant bank's argument that the assignment contract between Textil and Texhol of 18 December 1995 had been invalid, and (c) it had wrongly qualified the founding agreement as non-commercial.

245. The applicant bank further argued that the Zagreb Commercial Court's instruction of 28 October 2003 had not been in line with the national law either. That was so because: (a) a decision determining liability and ordering the payment of a particular sum could not be rendered in the form of an instruction, which could properly be used only for procedural directions (see section 7(3) of the 1978 Enforcement Procedure Act in paragraph 146 above), (b) the court had not been allowed to alter its decision of 3 October 2003 by its subsequent instruction, (c) the court had adopted the calculation made by FINA, which had wrongly used the compound method for calculating the statutory default interest in the period between 15 September 1986 and 6 October 1989.

246. In any event, even if it could be said that the decision and the instruction at issue were in accordance with Croatian law, the final sum seized from the applicant bank had been established in an arbitrary manner.

That was so because the decision and the instruction in question had been incomplete, imprecise and unclear, creating uncertainty as regards the extent of the applicant bank's liabilities. In particular, they had not defined the specific bank whose rates were to be applied in the period between 15 September 1986 and 6 October 1989, or whether the default interest should have been calculated by using the simple or the compound method. In that way they had eventually resulted in the imposition of an unforeseeable liability on the applicant bank. The applicant bank maintained that it could not reasonably have anticipated that its debt on the basis of the original judgment would reach the level of the amount eventually seized from it on 22 December 2003.

247. As regards the Government's suggestion that the real value of the original debt had in 1986 been almost DEM 57,000,000 (see paragraph 233 above), the applicant bank argued that there was no evidence or proper basis for that assertion. It explained that that assertion was solely based on the application of the "official exchange rate" in force in 1986, which had been fixed in an administrative way having the effect that the Yugoslav dinar had been consistently overvalued. At that time there had been no foreign exchange market in former Yugoslavia, companies could not have had foreign exchange accounts or kept foreign currency, indexing of monetary claims to a foreign currency had been prohibited and such contract clauses invalid. Therefore, although there had been a nominal official exchange rate, it had not reflected the DEM value in real terms.

(γ) As regards whether the State has fulfilled its positive obligations under Article 1 of Protocol No. 1 to the Convention

248. The applicant bank also submitted that the seizure of a substantial amount of money from its account was the result of enforcement proceedings in which the domestic courts, as plainly demonstrated above (see paragraphs 160-162, 164, 169-172, 190-195), had committed multiple procedural errors. In particular, the Commercial Court's decision of 3 October 2003 and instruction of 28 October 2003 had been rendered without a proper adversarial procedure. The applicant bank argued that in those circumstances those proceedings had not offered the necessary procedural guarantees enabling the domestic courts to adjudicate its case effectively and fairly, as required by the State's positive obligation under Article 1 of Protocol No. 1 to the Convention.

249. What is more, in the applicant bank's view, the State had failed to discharge another positive obligation under that Article, that is, to set up an appropriate legal framework that would enable enforcement debtors to recover sums seized from them in enforcement proceedings in situations where, like in the present case, a seizure ultimately proved to be without legal basis and the enforcement creditor had in the meantime gone bankrupt.

(b) The Court's assessment

(i) Applicable principles

250. The Court notes at the outset that the enforcement and the bankruptcy proceedings in the present case concern a civil-law dispute between private parties and therefore do not themselves engage the responsibility of the State under Article 1 of Protocol No. 1 to the Convention (see, *mutatis mutandis*, *Ruiz Mateos v. the United Kingdom*, no. 13021/87, Commission decision of 8 September 1988, Decisions and Reports (DR) 57, pp. 268 and 275; *Skowronski v. Poland* (dec.), no. 52595/99, 28 June 2001; *Kranz v. Poland* (dec.), no. 6214/02, 10 September 2002; *Eskelinen v. Finland* (dec.), no. 7274/02, 3 February 2004; and *Tormala v. Finland* (dec.), no. 41258/98, 16 March 2004). In particular, the mere fact that the State, through its judicial system, provided a forum for the determination of such a private-law dispute does not give rise to an interference by the State with property rights under Article 1 of Protocol No. 1 (see, for example, *Kuchař and Štis v. the Czech Republic* (dec.), no. 37527/97, 21 October 1998). The State may be held responsible for losses caused by such determinations if court decisions are not given in accordance with domestic law or if they are flawed by arbitrariness or manifest unreasonableness contrary to Article 1 of Protocol No. 1 (see, for example, *Vulakh and Others v. Russia*, no. 33468/03, § 44, 10 January 2012). However, the Court's jurisdiction to verify that domestic law has been correctly interpreted and applied is limited and it is not its function to take the place of the national courts. Rather, its role is to ensure that the decisions of those courts are not arbitrary or otherwise manifestly unreasonable (see, for example, *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 43, ECHR 2007-I).

251. The Court further reiterates that in all States Parties to the Convention the legislation governing private-law relations between individuals, including legal persons, includes rules which determine the effects of these legal relations with respect to property and, in some cases, compel a person to surrender a possession to another. Examples include, in particular, the seizure of property in the course of execution of a judgment. This type of rule cannot in principle be considered contrary to Article 1 of Protocol No. 1 unless a person is arbitrarily and unjustly deprived of property in favour of another (see *Bramelid and Malmström v. Sweden*, no. 8588/79 and 8589/79, Commission decision of 12 October 1982, DR 9, pp. 64 and 82, and *Dabić v. the former Yugoslav Republic of Macedonia* (dec.), no. 59995/00, 3 October 2001).

252. Therefore, as its case-law bears out, the Court's task in the present case is to examine whether the decisions of the domestic courts refusing to postpone either the enforcement itself or the distribution of Retag's bankruptcy estate, or the decisions resulting in the seizure of a substantial amount from the applicant bank's account on 22 December 2003, were arbitrary or manifestly unreasonable. If the Court were to find that they

were not, then those decisions did not even amount to an interference with the applicant bank's right to peaceful enjoyment of its possessions, let alone to a violation of Article 1 of Protocol No. 1 to the Convention (see *Anheuser-Busch Inc.,* cited above, § 87).

(ii) Preliminary remarks

253. The Court first notes that the enforcement proceedings instituted by Retag resulted first in the seizure of HRK 5,416,078.56 on 12 February 1996 (see paragraph 25 above) and later in the seizure of HRK 168,618,419.60 on 22 December 2003 (see paragraph 62 above) from the applicant bank's account. Those enforcement proceedings were conducted on the basis of: (a) the original judgment of 7 June 1995 (see paragraph 10 above) as the enforcement title, and (b) the assignment contract of 18 December 1995 (see paragraph 18 above) as the supplementary enforcement title within the meaning of section 14(1) of the 1978 Enforcement Procedure Act (see paragraph 146 above). By that assignment contract Textil assigned to Texhol (later named Retag) its claim against the applicant bank established by the original judgment. The Court further observes that after the applicant bank lodged its application with the Court on 13 October 2005, the High Commercial Court has established, by a final judgment of 16 October 2007, that the assignment contract in question was non-existent (see paragraph 91 above).

254. For the Court, having the benefit of hindsight, it is now clear that Retag was not entitled to seek enforcement of the original judgment and that, having regard to section 59 of the 1978 Enforcement Procedure Act (see paragraph 146 above) and section 210 of the 1978 Obligations Act (see paragraph 123 above), the applicant bank would therefore in normal circumstances be entitled either to seek counter-enforcement (see paragraph 146 above) or to bring a separate civil action for unjust enrichment against Retag in order to recover the amounts seized from it in enforcement proceedings. The Government did not seem to contest that.

255. That being so, the Court considers that it first has to examine whether the refusal of the domestic courts to postpone either the enforcement itself or the distribution of Retag's bankruptcy estate amounted to an interference with the applicant bank's right under Article 1 of Protocol No. 1 to the Convention to peaceful enjoyment of its possessions. Only if the Court were to find no interference on that account would it have to examine further whether the seizure of substantial amounts of money from the applicant bank's account in the enforcement proceedings constituted an interference with that right.

(iii) As regards the refusal of the domestic courts to postpone either the enforcement itself or the distribution of Retag's bankruptcy estate

256. The Court notes that the Zagreb Commercial Court in its decision of 27 October 2003 and the High Commercial Court in its decision of 6 April 2004 dismissed the applicant bank's motion for postponement of

enforcement (see paragraphs 49 and 51 above). Likewise, the Karlovac Commercial Court in its decision of 23 December 2004 and the High Commercial Court in its decision of 23 March 2005 dismissed the applicant bank's objection to the final disbursement plan and decided that there were no reasons to postpone the distribution of Retag's bankruptcy estate or to reserve the amount corresponding to the applicant bank's claim raised on 22 December 2004 in its second civil action for unjust enrichment (see paragraphs 81-82 above).

257. The Zagreb Commercial Court and the High Commercial Court, in decisions of 27 October 2003 and 6 April 2004 respectively, dismissed the applicant bank's motion for postponement of enforcement because at the time: (a) Retag's claim against the applicant bank was based on the original judgment of 7 June 1995 as the valid enforcement title, and the assignment contract of 18 December 1995 as the supplementary enforcement title, which was assumed valid as it was certified by a notary public, (b) the applicant bank did not possess a single judicial decision in support of its arguments that the assignment contract in question was not valid or that Retag's claim against it had been extinguished by being offset against the bank's claim against Retag, (c) the mere contention that the applicant bank's alleged claim against Retag was larger than Retag's existing claim against the bank was not sufficient for those courts to conclude that the bank would suffer significant damage if the enforcement was to be carried out, (d) the enforcement proceedings for the execution of the original judgment, which were considered urgent under the domestic law, had already lasted some eight years and three months (see paragraphs 49 and 51 above) and (e) the applicant bank's motion for postponement of enforcement was viewed as an abuse of process. In those circumstances, the Court considers that those courts had a reason to believe that the proper course of action was to proceed with the enforcement despite the fact that at the time the civil proceedings whereby the applicant bank sought declaration of the assignment contract of 18 December 1995 non-existent were still pending (see paragraphs 88-94 above).

258. The Karlovac Commercial Court and the High Commercial Court based their decisions of 23 December 2004 and 23 March 2005 respectively, on section 87a of the Bankruptcy Act, which sets out the duty of a bankruptcy administrator to ensure, throughout the entire proceedings (see paragraph 155 above), that there are sufficient funds in the bankruptcy estate to settle its foreseeable obligations, and also sets out his duty to reserve funds to cover such obligations for which it can legitimately be assumed would have to be settled in the future. In deciding as they did those courts took the view that the outcome and the state of various proceedings instituted by and against the applicant bank had not at the time given rise to a legitimate assumption that the applicant bank's claim for restitution of HRK 168,618,419.60 was well-founded and thus would have to be settled in the future (see paragraphs 81-82 above). Indeed, on 23 March 2005, that is, at the time the High Commercial Court rendered its decision: (a) the

enforcement proceedings resulting in the seizure of the sum in question had lasted some nine years and two months and the bankruptcy proceedings themselves had been pending for almost five years, (b) the applicant bank's civil action to declare the enforcement inadmissible had been dismissed by a first-instance court (see paragraph 114 above), (c) the first-instance decision setting aside the original judgment and allowing the applicant bank's petition for reopening had been quashed and the case remitted to the first-instance court (see paragraph 16 above), (d) the criminal proceedings against the sole shareholder of Retag, Mr A.K., had been discontinued (see paragraph 100 above), (e) the applicant bank's first civil action for unjust enrichment had been declared inadmissible by a final decision (see paragraphs 102-103 above), and (f) the assignment contract of 18 December 1995 was assumed valid, as in the civil proceedings to contest its validity, which would eventually lead to a finding that it was non-existent, not even a first-instance judgment had been adopted (see paragraphs 88-89 above). Having regard to these reasons, the Court finds it understandable that those courts perceived the applicant bank's second action for unjust enrichment brought on 22 December 2004 (see paragraph 106 above), as another part of its strategy, and consequently, that the appropriate course of action was to distribute the assets pertaining to the bankruptcy estate to Retag's creditors in satisfaction of their claims.

259. While it may be argued that in their decisions all three commercial courts in question could have balanced the competing interests involved differently (by, for example, taking into account in particular the sheer size of the applicant bank's claim, the risk that the claim would become irretrievable, and the fact that Retag's shareholders were to receive around two-thirds of the bankruptcy estate) the Court, having regard to the applicable principles (see paragraphs 250-252 above), finds no indication that those decisions were based on arbitrary or manifestly unreasonable considerations, let alone that they were unlawful under the domestic law.

260. Therefore, the fact that the domestic courts neither postponed the enforcement itself nor the distribution of Retag's bankruptcy estate did not constitute an interference with the applicant bank's right to peaceful enjoyment of its possessions under Article 1 of Protocol No. 1 to the Convention.

(iv) As regards the seizure of a substantial amount of money from the applicant bank's account in the enforcement proceedings

261. The Court notes that the applicant bank argued that the Zagreb Commercial Court's decision of 3 October 2003 (see paragraph 44 above) and the instruction of 28 October 2003 (see paragraph 61 above) had been contrary to domestic law and arbitrary, leading to the seizure of the unforeseeable sum from its account on 22 December 2003.

262. In this connection the Court first notes that a certain degree of uncertainty as regards the final sum to be paid is inherent in calculation of any default interest, because that interest continues to run up to the day of

payment. It further notes that it has been standard practice for the Croatian courts in judgments ordering payment of certain sums of money to indicate only the amount of principal debt to be paid (see paragraph 131 above). For statutory default interest a standard formula "*with statutory default interest in accordance with the applicable regulations ... accruable from...*" has been used. This practice has not given rise to difficulties, as the relevant legislation has been relatively clear in respect of the rates and methods of calculation of statutory default interest. In the present case the difficulties arose because the domestic courts had to calculate the statutory default interest, *inter alia*, for the period between 15 September 1986 and 6 October 1989, during which the relevant legislation in force referred to information (bank interest rates paid on time savings deposits) which – by the time those courts where about to render their decisions – was due to the lapse of time no longer easily obtainable (see paragraphs 56, 58 and 134-137 above). Therefore, to the extent that in the present case the calculation of the statutory default interest might have gone beyond its inherent uncertainty, the Court considers that this could have primarily been the result of the described problem in the application of that legislation and the ensuing evidentiary difficulties, rather than of the manner the Zagreb Commercial Court applied it in its decision of 3 October 2003 and the instruction of 28 October 2003.

263. In fact, the Court is unable to find that the way the Zagreb Commercial Court interpreted and applied that or any other domestic legislation, or the solution it reached, were arbitrary or manifestly unreasonable. In this respect the Court reiterates that its power to review compliance with domestic law is limited (see, among other authorities, *Allan Jacobsson v. Sweden (no. 2)*, 19 February 1998, § 57, *Reports* 1998-I). It is in the first place for the national authorities, notably the courts, to interpret and apply the domestic law, even in those fields where the Convention "incorporates" the rules of that law, since the national authorities are, in the nature of things, particularly qualified to settle the issues arising in this connection (see *Pavlinović and Tonić v. Croatia* (dec.), no. 17124/05 and 17126/05, 3 September 2009). This is particularly true when, as in this instance, the case turns upon difficult questions of interpretation of domestic law (see *Anheuser-Busch Inc.,* cited above, § 83). Consequently, the Court finds no indication that the Zagreb Commercial Court's decision of 28 October 2003 or the instruction of 28 October 2003 were unlawful under domestic law, arbitrary or otherwise manifestly unreasonable.

264. Lastly, for the Court it cannot be argued that the amount seized from the applicant bank on 22 December 2003 was excessive compared to the principal debt and thus arbitrary, or that it was unforeseeable. In this connection the Court first takes note of the Government's argument that the real value of the original debt had been almost DEM 57,000,000 (see paragraph 233 above), as well as of the applicant bank's arguments to the contrary (see paragraph 247 above). It further notes that statutory default

interest was accumulating on the principal sum of HRK 1,100, the sum the applicant bank had been ordered to pay by the original judgment, for more than seventeen years, that is from 15 September 1986 to 22 December 2003, and that during that period the rate of statutory default interest was often very high and the interest was calculated on a monthly basis in order to compensate for high inflation (see paragraph 138 above). That being so, and given that the compound method was used to calculate the statutory default interest during a large part of that period (see paragraphs 59 and 138 above), the Court does not find it surprising and thus unforeseeable that the amount eventually seized from the applicant bank reached HRK 168,618,419.60.

265. It follows that the seizure of substantial amounts of money from the applicant bank's account in the enforcement proceedings did not amount to an interference with the applicant bank's right to peaceful enjoyment of its possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention.

(v) As regards whether the State has fulfilled its positive obligations under Article 1 of Protocol No. 1 to the Convention

266. The Court reiterates that the genuine, effective exercise of the right protected by Article 1 of Protocol No. 1 does not depend merely on the State's duty not to interfere, but may require positive measures of protection, particularly where there is a direct link between the measures an applicant may legitimately expect from the authorities and his effective enjoyment of his possessions (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 134, ECHR 2004-XII, and *Broniowski v. Poland* [GC], no. 31443/96, § 143, ECHR 2004-V). Those positive obligations may entail certain measures necessary to protect the right of property, even in cases involving litigation between individuals or companies.

267. Furthermore, although Article 1 of Protocol No. 1 contains no explicit procedural requirements, the existence of procedural positive obligations under this provision has been recognised by the Court both in cases involving State authorities and in cases entirely between private parties (see *Kotov v. Russia* [GC], no. 54522/00, § 114, 3 April 2012). This means, in particular, that in cases belonging to the latter category States are under an obligation to afford judicial procedures that offer the necessary procedural guarantees and therefore enable the domestic courts and tribunals to adjudicate effectively and fairly any disputes between private individuals (see, for example, *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 96, ECHR 2002-VII; *Anheuser-Busch Inc.,* cited above, § 83; *Freitag v. Germany*, no. 71440/01, § 54, 19 July 2007; and *Kotov*, loc. cit.).

268. Thus, in the present case the Court has to further examine whether the enforcement proceedings complained of offered the necessary procedural guarantees enabling the domestic courts to adjudicate the applicant bank's case effectively and fairly. In other words, the Court has to ascertain whether the alleged unfairness of those enforcement proceedings amounted to a breach of the State's procedural positive obligations under Article 1 of Protocol No. 1 to the Convention.

269. In this connection the Court first refers to its above finding under Article 6 § 1 of the Convention that there had been a violation of the applicant bank's right to an adversarial hearing in the enforcement proceedings (see paragraph 205 above). However, at this juncture the Court also finds it important to emphasise that each and every violation of Article 6 of the Convention does not automatically lead to a violation of the State's procedural positive obligations under Article 1 of Protocol No. 1 to the Convention in cases where both Articles are applicable to the same facts (see, for example, *Ukraine-Tyumen v. Ukraine*, no. 22603/02, § 52, 22 November 2007). The latter Article concerns the substance of the right of property and its breach cannot be determined solely in the light of the same criteria relevant for determining whether there was a breach of Article 6 of the Convention, as other elements are also relevant (see *Wiesinger v. Austria*, 30 October 1991, § 77, Series A no. 213). In particular, under the Court's case-law, in order to find a violation of Article 1 of Protocol No. 1 in such cases it is necessary for the unfairness established under Article 6 of the Convention to have a "direct impact" on the applicant's property rights (see, for example, *Sovtransavto Holding*, cited above, § 97; *Kunić v. Croatia*, no. 22344/02, § 67, 11 January 2007; *Marini v. Albania*, no. 3738/02, § 173, 18 December 2007; *Agrokompleks v. Ukraine,* no. 23465/03, § 170, 6 October 2011; and *Ivan Atanasov v. Bulgaria*, no. 12853/03, § 83, 2 December 2010).

270. Having regard to these principles, the Court considers that in the present case it cannot be said that the failure of the Zagreb Commercial Court in the enforcement proceedings to enable the applicant bank to comment on FINA's calculation of statutory default interest, on account of which the Court has found a violation of Article 6 § 1 of the Convention (see paragraphs 196-205 above), had a "direct impact" on the applicant bank's right to peaceful enjoyment of its possessions. That is so because the Court cannot speculate as to what the outcome of those enforcement proceedings would have been had the applicant bank been afforded that opportunity.

271. It follows that the facts that led the Court to find a violation of Article 6 § 1 of the Convention did not at the same time lead to a violation of Article 1 of Protocol No. 1 thereto. This conclusion remains unaltered even if those facts are not examined in isolation from but together with other facts examined above in the context of the applicant bank's complaint under Article 1 of Protocol No. 1 to the Convention (see paragraphs 261-263 above) as they are not of such a nature as to render, in one way or another, the Zagreb Commercial Court's decision of 28 October 2003 or its instruction of 28 October 2003 arbitrary.

272. It follows that a violation of Article 6 § 1 of the Convention in the enforcement proceedings, which proceedings resulted in the seizure of a substantial sum of money from the applicant bank's account, did not at the same time entail a breach of the State's procedural positive obligation under Article 1 of Protocol No. 1 to the Convention.

273. As regards the applicant bank's argument, that the failure of the Croatian legal system taken as a whole to set up a mechanism that would enable it to recover the sum unjustifiably seized from it in the enforcement proceedings entailed a breach of the State's positive obligations under Article 1 of Protocol No. 1 to the Convention (see paragraphs 209 and 249 above), the Court first reiterates that each Contracting State must equip itself with an adequate and sufficient legal arsenal to ensure compliance with the positive obligations imposed on it (see, for example, *Păduraru v. Romania*, no. 63252/00, § 93, ECHR 2005-XII). However, the measures which the State can be required to take in such a context can be preventive or remedial (see *Kotov*, cited above, § 113).

274. In this connection the Court notes the applicant bank had an opportunity to appeal against the Commercial Court's decision of 3 October 2003, seek postponement of enforcement and object to the final distribution plan, of which it availed itself. The mere fact that the outcome of the aforementioned preventive remedies was not favourable for the applicant bank, does not mean that the State did not comply with its positive obligation under Article 1 of Protocol No. 1 to the Convention (see, by analogy, *Savez crkava "Riječ života" and Others v. Croatia*, no. 7798/08, § 121, 9 December 2010), as it is an obligation of means, not of result.

275. Besides, the applicant bank had at its disposal remedies, in particular the application for counter-enforcement under section 59 of the 1978 Enforcement Procedure Act (see paragraph 146 above) and the action for unjust enrichment under the 1978 Obligations Act (see paragraph 123 above) allowing it to seek restitution of sums unjustifiably seized from it in the enforcement proceedings. To accept the applicant bank's argument and oblige the States to provide a mechanism capable of recovering unjustifiably seized amounts even in situations where the enforcement creditor went bankrupt (see paragraph 249 above), would run contrary to the Court's established case-law according to which the States cannot be held responsible for the obligations of a private company which, having become insolvent, is no longer able to pay off its debts (see, for example, *Bobrova v. Russia*, no. 24654/03, § 16, 17 November 2005).

276. Lastly, to the extent that the seizure of a substantial amount of money from the applicant bank's account in the enforcement proceedings and the subsequent distribution of a large portion of it to Retag's shareholders in the bankruptcy proceedings could have been the result of a criminal offence by Retag's former sole shareholder A.K. (see paragraphs 95-100 above), the Court reiterates that an additional positive obligation arises for the State under Article 1 of Protocol No. 1 to the Convention where the interference with the property rights perpetrated by private individuals is of a criminal nature (see *Blūmberga v. Latvia*, no. 70930/01, §§ 67-68, 14 October 2008). In particular:

> 67. ... this obligation will in addition require that the authorities conduct an effective criminal investigation and, if appropriate, prosecution (see, *mutatis mutandis*, *M.C. v. Bulgaria*, no. 39272/98, §§ 151-153, ECHR 2003-XII). In that

> respect, it is clear that the obligation, like the obligation under Articles 2 and 3 of the Convention to conduct an effective investigation into loss of life or allegations of ill-treatment, is one of means and not one of result; in other words, the obligation on the authorities to investigate and prosecute such acts cannot be absolute, as it is evident that many crimes remain unresolved or unpunished notwithstanding the reasonable efforts of the State authorities. Rather, the obligation incumbent on the State is to ensure that a proper and adequate criminal investigation is carried out and that the authorities involved act in a competent and efficient manner. Moreover, the Court is sensitive to the practical difficulties which the authorities may face in investigating crime and to the need to make operational choices and prioritise the investigation of the most serious crimes. Consequently, the obligation to investigate is less exacting with regard to less serious crimes, such as those involving property, than with regard to more serious ones, such as violent crimes, and in particular those which would fall within the scope of Articles 2 and 3 of the Convention. The Court thus considers that in cases involving less serious crimes the State will only fail to fulfil its positive obligation in that respect where flagrant and serious deficiencies in the criminal investigation or prosecution can be identified (...).
>
> 68. The Court considers, furthermore, that the possibility of bringing civil proceedings against the alleged perpetrators of a crime against property may provide the victim with a viable alternative means of securing the protection of his rights, even if criminal proceedings have not been brought to a successful conclusion, provided that a civil action has reasonable prospects of success (cf. *Plotiņa v. Latvia* (dec.), no. 16825/02, 3 June 2008). While the outcome of criminal proceedings may have a significant or even decisive effect on the prospects of a civil claim, whether lodged in the context of the criminal proceedings or brought in separate civil proceedings, the State cannot be held responsible for the lack of prospects of such a claim simply because a criminal investigation has not ultimately led to a conviction. Rather, the State will only fail to fulfil its positive obligations under Article 1 of Protocol No. 1 if the lack of prospects of success of civil proceedings is the direct consequence of exceptionally serious and flagrant deficiencies in the conduct of criminal proceedings arising out of the same set of facts, as outlined in the preceding paragraph."

277. Given that in the present case the criminal proceedings against A.K. were discontinued only because of his death (see paragraph 100 above), it cannot be argued that the failure to bring those proceedings to a successful conclusion was the result of flagrant and serious deficiencies in the authorities' conduct (see, *mutatis mutandis*, *Blūmberga*, cited above, § 71). Furthermore, since the domestic law (see paragraph 143 above) in such cases does not require a final conviction in criminal proceedings in order to claim damages in civil proceedings (see *Blūmberga*, cited above, § 72), nothing has prevented the applicant bank to pursue its pecuniary claim (lodged in the criminal proceedings in its capacity of the injured party, see paragraph 99 above), by bringing a civil action for damages against A.K.'s heirs after his death (see paragraphs 129 and 158 above). In addition, within three months from his death the applicant bank could have, if it considered it necessary, applied for separation of patrimonies (*separatio bonorum*) under section 140 of the Inheritance Act (see paragraph 158 above) and in that way secured its claim for damages. However, the applicant bank did not submit any evidence that it had instituted such proceedings. In these circumstances, the Court finds that it cannot be established that a civil action for damages did not constitute an appropriate means whereby the

State could fulfil its above-described (see the preceding paragraph) positive obligations under Article 1 of Protocol No. 1 (see *Blūmberga*, loc. cit.).

278. The Court is therefore satisfied that the State in the present case discharged all its positive obligations under Article 1 of Protocol No. 1 to the Convention.

(vi) Conclusion

279. In the light of the foregoing considerations, the Court finds that the applicant bank's complaints under Article 1 of Protocol No. 1 to the Convention are inadmissible under Article 35 §§ 3 (a) of the Convention as manifestly ill-founded and thus must be rejected pursuant to Article 35 § 4 thereof.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No. 1 THERETO

280. The applicant bank also complained that it had no remedy in the Croatian legal system to recover the sum seized from it in the enforcement proceedings, despite the fact that it had managed to prove that this enforcement had had no basis in law. It relied on Article 13 of the Convention in conjunction with Article 1 of Protocol No. 1 thereto. Article 13 reads as follows:

> "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."

281. The Government and the applicant both relied on the arguments summarised in paragraphs 214-221 above.

282. The Court reiterates that Article 13 requires a remedy in domestic law only where an individual has an "arguable claim" that one of his or her rights or freedoms set forth in the Convention has been violated (see, for example, *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131).

283. In this connection the Court refers to its above findings according to which the applicant bank's complaints under Article 1 of Protocol No. 1 to the Convention are inadmissible as manifestly ill-founded (see paragraphs 250-279 above. It follows that the bank's complaint under Article 13 cannot be considered "arguable" for the purposes of Article 13 of the Convention.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

285. 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

286. The applicant bank claimed HRK 168,618,419.60, that is the amount seized from it on 22 December 2003, in compensation for pecuniary damage.

287. The Government contested that claim.

288. As regards the applicant bank's claim for pecuniary damage, the Court reiterates that there must be a clear causal connection between the pecuniary damage claimed by an applicant and the violation of the Convention found (see *Barberà, Messegué and Jabardo v. Spain* (Article 50), 13 June 1994, § 16, Series A no. 285-C; and *Çakıcı v. Turkey* [GC], no. 23657/94, § 127, ECHR 1999-IV). It further notes that in the present case it only found a violation of Article 6 § 1 of the Convention on account of the breach of the applicant bank's right to an adversarial hearing in the enforcement proceedings (see paragraphs 196-205 above) whereas the applicant bank's complaint under Article 1 of Protocol No. 1 to the Convention was declared inadmissible (see paragraphs 250-279 above). As already held above (see paragraph 270), the Court cannot speculate as to what the outcome of those enforcement proceedings would have been if the violation of Article 6 § 1 of the Convention had not occurred (see, for example, *Nideröst-Huber*, cited above, § 37). The Court therefore does not discern any causal link between the violation found and the pecuniary damage alleged and, consequently, rejects this claim.

289. As the applicant bank did not make any claim in respect of non-pecuniary damage, the Court sees no reason to make any award under this head.

B. Costs and expenses

290. The applicant bank claimed 479,840.02 pounds sterling (GBP) and HRK 822,311.49 for legal fees incurred in connection with the proceedings before the Court, of which GBP 394,865.02 were claimed in connection with the work done by Mr A. Walls and Ms J. Masterson of Linklaters Solicitors, GBP 84,975 for the work done by Ms D. Rose Q.C. of Blackstone Chambers, and HRK 822,311.49 for the legal services of Mr B. Porobija of the Law Firm Porobija & Porobija. In support of this claim, the applicant bank submitted a number of invoices prepared by the above-mentioned legal representatives and documents containing narratives

of their key activities. The invoices included legal fees for an unspecified number of hours of work and numerous and various other disbursements and charges. In addition, the applicant bank also claimed GBP 185,000 and HRK 180,000 as costs "expected to be incurred up to the final determination of the application".

291. The Government contested these claims.

292. 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.

293. The Court observes that the present case involved complex issues of fact and law requiring detailed preparation and examination. However, the Court reiterates that a significant portion of the submissions made by the applicant bank's legal representatives concerned complaints that were declared inadmissible. Therefore, no award can be made in respect of the costs and expenses incurred in connection with those submissions. Furthermore, the Court is not persuaded that all of the fees claimed by the applicant bank's legal representatives were necessarily and reasonably incurred.

294. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 10,000 for costs and expenses for the proceedings before the Court, plus any tax that may be chargeable to the applicant bank.

C. Default interest

295. The Court considers it appropriate that the default interest rate 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 to adversarial hearing 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 bank, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros), plus any tax that may be chargeable to the applicant bank, in respect of costs and expenses, to be converted into Croatian kunas at the rate applicable at 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 bank's claim for just satisfaction.

Done in English, and notified in writing on 12 December 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Isabelle Berro-Lefèvre
President