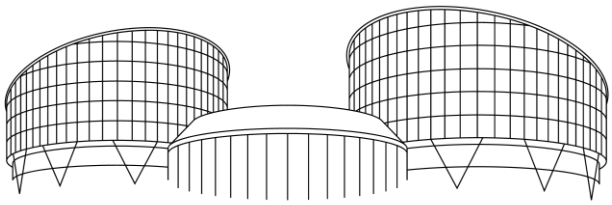

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF A. v. CROATIA

(Application no. 55164/08)

JUDGMENT

STRASBOURG

14 October 2010

FINAL

14/01/2011

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

In the case of A v. Croatia**,**

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

Christos Rozakis, *President,*
Nina Vajić,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 23 September 2010,

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

PROCEDURE

1. The case originated in an application (no. 55164/08) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Croatian national, Ms A ("the applicant"), on 8 October 2008. The President of the Chamber acceded to the applicant's request not to have her name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Ms S. Bezbradica, a lawyer practising in Zagreb. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. On 3 September 2009 the President of the First Section decided to communicate to the Government the complaints concerning the lack of adequate positive measures under Articles 2, 3 and 8 of the Convention, the complaint concerning the lack of an effective remedy under Article 13 and the complaint under Article 14 that the applicant was discriminated against on the basis of her gender. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1979 and lives in Z.

1. Background to the case

5. On 21 April 2001 the applicant married B and on 14 May 2001 a daughter, C, was born of the marriage. On 13 December 2005 the applicant brought a civil action in the Z. Municipal Court (*Općinski sud u Z.*), seeking a divorce from B. On 7 November 2006 the court dissolved the marriage of the applicant and B.

6. For the purposes of criminal proceedings instituted against him in 2003, B, who was still the applicant's husband at the time, underwent a psychiatric examination. The relevant part of the report drawn up by two psychiatrists on 6 December 2004 indicated that B had been captured during the Homeland War and detained in a concentration camp from 3 April to 14 August 1992, where he had been tortured and had sustained serious bodily injuries. It also indicated that since 1992 he had been suffering from mental disorders such as anxiety, paranoia, epilepsy and post-traumatic stress disorder (PTSD).

The relevant part of the report reads:

> "The patient is primarily an emotionally immature person who shows symptoms of chronic PTSD (lowered tolerance of frustration, egocentrism, latent aggressiveness, a tendency towards depressive reactions in stressful situations, as well as a worsening of his condition and impaired social functioning, in particular in family life).
>
> ..."

2. Criminal proceedings against B on charges of violent behaviour within the family

7. On 21 November 2005 B was arrested and detained on suspicion that he had committed the criminal offence of violent behaviour within the family. On 20 December 2005 the Z. State Attorney's Office indicted B in the Z. Municipal Court on charges of violent behaviour within the family. The indictment alleged that from 12 November 2003 to 21 August 2005 B had verbally insulted and threatened the applicant, prevented her from leaving the house and physically assaulted her; on 12 November 2003 he had physically assaulted her by punching her in the belly, throwing her on the floor and continuing to hit and kick her in the body and head; on 7 August 2005 he had hit the applicant in the face, back and hands, causing lacerations; and on 21 August 2005 he had kicked her in the leg.

8. On 20 December 2005 B was released, after his mother gave a statement saying that she would immediately take B to their house in P. However, after having been released, he continued abusing the applicant and therefore on 9 January 2006 the applicant, together with C, moved to a women's shelter in Z. (hereinafter "the shelter") run by a non-governmental organisation.

9. The first hearing scheduled before the Z. Municipal Court for 29 March 2006 was adjourned because B did not appear. The second hearing was held on 25 April 2006.

10. On 22 May 2006 the Z. State Attorney's Office extended the indictment to the criminal offence of neglecting and molesting a child or a minor. The extended indictment alleged that between November 2003 and February 2006 B had continually abused the applicant, both verbally and physically, in front of their daughter C, as well as using inappropriate language in respect of C, and had on several occasions punched and kicked C. Consequently, the case was transferred to the juvenile division (*odjel za mladež*) of the Z. Municipal Court.

11. Further hearings scheduled for 7 December 2006 and 20 February 2007 were adjourned because B did not appear. A hearing scheduled for 17 April 2007 was adjourned until 9 May 2007 at the request of B's legal representative. At that hearing the judge ordered a psychiatric examination of B.

12. The psychiatric examination established that B suffered from several mental disorders, including PTSD. The report of 2 January 2008 concluded:

> "In view of his mental state and the need for continued control and supervision, I would recommend that the court order a security measure of psychiatric treatment.
>
> Treatment may be carried out in a day hospital and without detention.
>
> This would enable him to follow a regular programme of therapy which would preserve his current relatively stable mental condition and hence diminish the likelihood of his repeating the criminal offences and, in practical terms, remove the risk to his environment."

13. Another hearing was held on 12 March 2008, at which the expert psychiatrist was questioned. The expert stated that, owing to his difficult war experiences, B suffered from PTSD; he was a neurotic person with a slightly below-average intellectual level, reduced emotional capacity and a passive-aggressive personality. For those reasons his understanding of his own actions and his ability to control his impulses were significantly reduced. The expert repeated his recommendation that a security measure of compulsory psychiatric treatment be applied.

14. A hearing scheduled for 29 April 2008 was adjourned until 4 June 2008 at the request of B's legal representative. That hearing was also adjourned because B did not appear. Hearings scheduled for 14 July and 3 October 2008 were adjourned because one of the witnesses, an employee of the Z. Social Welfare Centre, did not appear.

15. At a hearing held on 19 November 2008 the applicant gave evidence and the court accepted proposals by both parties to call further witnesses. At a hearing held on 10 December 2008 four witnesses gave evidence. Further witnesses were called for the hearing scheduled for 21 January 2009, but the hearing was adjourned until 4 March 2009 since B and one prosecution witness did not appear. The hearing scheduled for 4 March 2009 was also adjourned because B did not appear and the hearing scheduled for 2 April 2009 was adjourned because neither B nor the prosecutor appeared.

16. On 6 April 2009 judge M.B. asked to be allowed to step down from the case, since in March 2009 B had threatened her and she had reported B to the police (see paragraph 23 below). The president of the Z. Municipal Court granted her request on 21 April 2009.

17. On 9 March 2009 B was admitted voluntarily to a psychiatric hospital, where he stayed until 6 April 2009. On 18 April he again went to a psychiatric hospital voluntarily. On 13 May 2009 the new judge ordered an additional psychiatric examination of B, in order to establish whether he was fit to stand trial. The expert concluded that, even though B's mental condition had deteriorated somewhat, he was still capable of standing trial. B left the hospital on 28 May 2009. Owing to the change of presiding judge in the proceedings, all the evidence had to be presented again. The first hearing in front of the new judge was held on 11 November 2009. A hearing scheduled for 14 December 2009 was adjourned until 13 January 2010 at the request of B's legal representative. A hearing was held on 16 February 2010. The criminal proceedings are still pending.

3. Criminal proceedings against B on charges of making threats against the applicant and a police officer

18. On 1 March 2006 the Z. State Attorney's Office indicted B in the Z. Municipal Court on charges of making death threats against the applicant on 1 March 2006.

19. Further to that, on 30 June 2006 B was arrested and detained on suspicion of the criminal offence of making death threats against the applicant and a police officer, I.G. On 27 July 2006 the Z. State Attorney's Office indicted B on charges of making death threats against the applicant and I.G.

20. On 8 September 2006 the two sets of proceedings were joined. On 16 October 2006 B was found guilty of three counts of making death threats and sentenced to eight months' imprisonment. The relevant extracts from the operative part of the judgment read:

> "B ...
>
> is guilty
>
> on the grounds that
>
> 1. in the period from 29 May to 12 June 2006 ... on the official premises of the Social Welfare Centre, during meetings with minor child C, in order to incite feelings of fear in his former wife A, he whispered several times in her ear that she was a villain, that he was going to get rid of her, that she knew what he was capable of and that she would be swallowed up by darkness; on 14 June 2006 after the meeting with his minor child, he approached A on the street in front of the building of the Social Welfare Centre and whispered in her ear to beware of him and that he was going to get rid of her, which caused in A feelings of anxiety and fear for her own life...
>
> 2. during November 2005, in Z., on the premises of ... police station during an interview [with the police conducted] following a criminal complaint against him on

allegations of having committed the criminal offence of violent behaviour within the family ... told a policewoman ..., in order to incite in her feelings of fear, that she brought shame upon the Croatian police, that she was conspiring against him with his former wife, that he knew the head of the police ... and Minister ... that these were her last days in police service and that he was going to get rid of her; on 19 January 2006 in the Zagreb Minor Offences Court during her testimony, he repeated that she brought shame upon the Croatian police, that she was conspiring against him with his former wife and that he was going to get rid of her, that he was not going to beat her but would have done with her and would remember her, which caused in her feelings of fear and of a risk to her own life...

3. on 21 November 2005 in Z., on the premises of ... police department, in order to incite in her feelings of fear and fear for her personal safety, called wife A several times on her cellular phone, telling her to withdraw her criminal complaint against him and, when she refused, told her that she would be swallowed up by darkness, to beware of him, that nothing was going to be as before and that he was going to put her in jail, which caused in A feelings of fear and fear for her personal safety..."

21. On 24 October 2006 B was released from detention. On the same day the Z. Municipal Court issued a restraining order against B, prohibiting access to the applicant at a distance of less than three hundred metres, and prohibiting contact with the applicant.

22. Both the Z. State Attorney's Office and B lodged appeals against the first-instance judgment. On 22 May 2007 the judgment was upheld by the Z. County Court and thus became final. The judgment has not yet been enforced.

4. Criminal proceedings against B on charges of making death threats against a judge and her minor daughter

23. On an unspecified date the Z. State Attorney's Office indicted B in the Z. Municipal Court on charges of making death threats against judge M.B. and her minor daughter (see paragraph 16 above). In the course of the proceedings B was arrested on 4 September 2009 and placed in pre-trial detention. On 19 October 2009 the Z. Municipal Court found B guilty as charged and sentenced him to three years' imprisonment and also ordered his compulsory psychiatric treatment. It seems that B is still in detention but no information has been provided as to where and whether any psychiatric treatment has been provided.

5. Minor offences proceedings against B

(a) The first set of proceedings

24. On 7 January 2004 a police station lodged a request with the Z. Minor Offences Court (*Prekšajni sud u Z.*) for minor offences proceedings to be instituted against B. It was alleged that on 12 November 2003 B had assaulted the applicant and pushed her onto the floor, while kicking her in the body and head.

25. At a hearing held on 8 June 2004 the applicant refused to give evidence and the proceedings were discontinued.

(b) The second and third sets of proceedings

26. On 14 November 2005 a police station lodged two requests with the Z. Minor Offences Court for minor offences proceedings to be instituted against B.

27. In the first request, it was alleged that on 21 August 2005 B had verbally abused the applicant in front of C and had kicked the applicant in the leg. In a decision of 20 November 2006 the court found B guilty of domestic violence and imposed a fine in the amount of 2,000 Croatian kuna (HRK). There is no indication that this fine has been enforced.

28. In the second request it was alleged that on 7 August 2005 B had first forcefully stopped the applicant from taking a bath and had hit her in the face, back and hands, causing lacerations. In a decision of 19 July 2007 the court found B guilty of domestic violence and imposed a fine in the amount of HRK 7,000. However, this decision did not become final because the proceedings were discontinued on 28 November 2007, having become time-barred.

(c) The fourth set of proceedings

29. On 26 March 2006 the applicant lodged a request with the Z. Minor Offences Court under the Protection against Domestic Violence Act, for minor offences proceedings to be instituted against B. She alleged that since 29 March 2005 B had repeatedly assaulted her in front of C and caused her bodily injuries. These were described in the enclosed medical reports of 29 March and 16 August 2005 as contusions to the upper lip, right calf and right foot. The injuries were classified as minor bodily injuries. He had further threatened to kill her on 1 February 2006.

30. The applicant also requested that protective measures be immediately imposed in the form of prohibiting access to her proximity, a prohibition on harassing or stalking her and compulsory psycho-social treatment. The applicant explained that B had been diagnosed with several mental disorders and had been undergoing treatment for years. She requested that the proceedings be instituted as a matter of urgency.

31. The court held a preliminary hearing (*pripremno ročište*) on 27 June 2006, and subsequent hearings on 19 September 2006 and 26 September 2006. In a decision of 2 October 2006 the court found B guilty of domestic violence and imposed a fine in the amount of HRK 6,000. A protective measure prohibiting access to the applicant at a distance of less than one hundred metres for a period of one year was also ordered, as well as a protective measure of compulsory psycho-social treatment for a period of six months. The relevant extracts from the operative part of the decision read:

"B

is guilty

on the grounds that

> on 1 February 2006 in their flat ... he threatened his wife with the following words: 'I will kill you, you won't walk again ... you will never see your child again' in the presence of their minor child C ... which acts of violence he repeated on several subsequent occasions causing her physical injuries also ..."

32. On 30 October 2006 the applicant lodged an appeal, arguing that a protective measure in the form of a prohibition on harassing or stalking her and C and a protective measure of prohibition of access to C should have also been applied. She argued further that the measure of prohibition on access to her was not sufficiently precise because the court had failed to specify the date on which the measure was to be implemented. B also lodged an appeal.

33. The appeals of B and the applicant were dismissed on 31 January 2007 by the High Minor Offences Court.

34. B paid HRK 1,000 of the fine. The remaining fine in the amount of HRK 5,000 was supplemented by a prison term which B has not served. The Government explained that this was because Z. Prison was full to capacity. Furthermore, B has not undergone the compulsory psycho-social treatment because of the lack of licensed individuals or agencies able to execute such a protective measure. Execution of the sentence became time-barred on 31 January 2009.

35. On 10 December 2007 the applicant informed the Z. Minor Offences Court that B had violated the restraining order and that in October 2007 he had hired a private detective who had come to her secret address where she had been living after leaving the shelter. The applicant reiterated her request for the application of an additional protective measure in the form of a prohibition on harassing and stalking a victim of violence. Her request was dismissed in a decision of the Z. Minor Offences Court of 12 December 2007 on the ground that she had not shown an immediate risk to her life. On 17 December 2007 the applicant lodged an appeal against that decision. The court dismissed her appeal on 7 January 2008. The applicant lodged a constitutional complaint against that decision on 18 February 2008. On 19 March 2008 the Constitutional Court found that it had no jurisdiction in the matter.

6. Other relevant facts

36. On an unspecified date the applicant and C left the shelter and went to live at a secret address. On 14 October 2007 an unknown man appeared at their door. The applicant's partner opened and the man at the door introduced himself as a private detective hired by B to find out the whereabouts of the applicant and C.

37. The applicant moved out and lived in a nearby village for five months. According to the applicant, she was not able to find new accommodation elsewhere because all the landlords she had approached answered that they had no wish to deal with her violent ex-husband.

38. In the course of the divorce proceedings between the applicant and B, the Z. Municipal Court issued an interim measure on 9 March 2006 and

ordered contact between B and C twice a week for one hour on the premises of the Z. Social Welfare Centre, under expert supervision. The applicant did not comply with the decision, so on 23 May 2006 the court threatened her with a fine unless she complied with the order. After that decision the applicant complied with the interim measure until mid-June 2006.

39. On 7 November 2006 the Z. Municipal Court dissolved the marriage of the applicant and B and also ordered B to pay child maintenance for C. It further prohibited B from contacting C. Both parties lodged appeals, and on 11 September 2007 the Z. County Court (*Županijski sud u Z.*) upheld the divorce but quashed the first-instance judgment concerning the amount of maintenance to be paid in respect of C and the ban on contact between B and C, and remitted the case in that part.

40. On 7 October 2008 the Z. Municipal Court gave a fresh judgment on the amount of maintenance and ordered contact between B and C twice a month for two hours in a children's play centre in Z., under the expert supervision of the Z. Social Welfare Centre. Both parties lodged appeals, and on 27 January 2009 the Z. County Court upheld the part of the judgment concerning contact between B and C, quashed the decision on maintenance and remitted the case in that part. The proceedings on the child maintenance are still pending.

II. RELEVANT DOMESTIC LAW

Relevant criminal law

41. The relevant parts of the Criminal Code (*Kaznenei zakon Republike Hrvatske*, Official Gazette nos. 110/1997, 28/1998, 50/2000, 129/2000, 51/2001, 11/2003, 105/2004, 84/2005 and 71/2006) read as follows:

Article 75

"A security measure of compulsory psychiatric treatment may be imposed only as regards a perpetrator who, at the time of committing a criminal offence, suffered from significantly diminished responsibility [and] where there is a risk that the factors giving rise to the state [of diminished responsibility] might incite the future commission of a further criminal offence.

A security measure of compulsory psychiatric treatment may be imposed, under the conditions set out in paragraph 1 of this Article, during the execution of a prison sentence, in lieu of a prison sentence or together with a suspended sentence.

Compulsory psychiatric treatment shall be imposed for as long as the grounds for its application exist, but [it shall not] in any case exceed the prison term ... Compulsory psychiatric treatment shall not under any circumstances exceed three years.

..."

BODILY INJURY

Article 98

"Anyone who inflicts bodily injury on another person or impairs another person's health shall be fined or sentenced to imprisonment for a term not exceeding one year."

Article 102

"Criminal proceedings for the offence of inflicting bodily injury (Article 98) shall be instituted by means of private prosecution."

THREATS

Article 129

"(1) Anyone who threatens another person with harm in order to intimidate or disturb that person shall be fined up to one hundred and fifty monthly wages or sentenced to imprisonment for a term not exceeding six months.

(2) Anyone who seriously threatens to kill another person ... shall be fined or sentenced to imprisonment for a term not exceeding one year.

...

(4) Criminal proceedings for the criminal offences defined in paragraphs 1 and 2 of this Article shall be instituted upon [a private] application."

VIOLENT BEHAVIOUR WITHIN THE FAMILY

Article 215a

"A family member who by an act of violence, ill-treatment or particularly contemptuous behaviour places another family member in a humiliating position shall be sentenced to imprisonment for a term of between six months and five years."

Relevant minor offences law

42. The relevant provisions of the Protection against Domestic Violence Act (Official Gazette no. 116/2003, *Zakon o zaštiti of nasilja u obitelji*) provide:

Section 1

"This Act defines the term domestic violence, persons considered as family members within the meaning of this Act, the manner of protection of family members and the types and purpose of minor offences sanctions."

Section 2

"(1) The provisions of the Minor Offences Act are to be applied in respect of minor offences in the sphere of domestic violence, unless otherwise provided by this Act.

(2) All proceedings instituted under this Act shall be urgent."

Section 4

"Domestic violence is:

– any use of physical force or psychological pressure against a person's integrity;

– any other act by a family member which might cause physical or mental suffering;

– causing fear, fear for personal safety or harm to a person's dignity;

– physical assault irrespective of whether it has caused injury;

– verbal assaults, insults, cursing, calling names or other forms of serious harassment;

– sexual harassment;

– stalking and all other forms of harassment;

– illegal isolation of a person or restricting his or her freedom of movement or communication with others;

– causing damage to or destruction of property or attempting to do so."

Types and purpose of minor offences sanctions for protection from domestic violence

Section 6

"(1) Minor offences sanctions for protection from domestic violence are fines, imprisonment and protective measures.

..."

Protective measures

Section 7

"A court may order the following protective measures against the perpetrator of an act of domestic violence

(a) compulsory psycho-social treatment;

(b) prohibiting access to the victim's proximity;

(c) prohibition on harassing and stalking the victim of violence;

(d) removal from flat, house or other living premises;

(e) providing protection to a person exposed to violence;

(f) compulsory treatment for addiction;

(g) seizure of objects intended for or used in the commission of a minor offence."

Purpose of protective measures

Section 8

"The purpose of protective measures is to prevent domestic violence, to secure the necessary protection of the health and safety of a person exposed to violence and to remove the circumstances favourable to or capable of inciting the commission of a further minor offence."

Protective measure of compulsory psycho-social treatment

Section 9

"(1) A protective measure of obligatory psycho-social treatment may be imposed in respect of the perpetrator of an act of domestic violence in order to put an end to the violent behaviour of the perpetrator or where there is a risk that the perpetrator might reoffend against persons under section 3 of this Act.

(2) The measure under paragraph 1 of this section shall remain in place as long as the reasons for which it has been imposed exist, but for no longer than six months.

..."

Protective measure prohibiting access to the victim's proximity

Section 10

"(1) A protective measure prohibiting access to the victim's proximity may be imposed against a person who has committed an act of domestic violence where there is a risk that he or she might reoffend.

(2) A decision imposing a measure prohibiting access to the victim's proximity shall define the places or areas covered as well as the distance of access.

(3) The duration of a measure under paragraph one of this section shall not be shorter than one month or exceed one year.

..."

Protective measure prohibiting the harassing and stalking of a victim of violence

Section 11

"(1) A protective measure prohibiting the harassing and stalking of a victim of violence may be ordered against a person who has committed violence by harassing or stalking and where there is a danger of his or her reoffending against persons under section 3 of this Act.

(2) The measure under paragraph 1 of this section shall be ordered for a period from one month to one year.

..."

Protective measure of providing protection to a person exposed to violence

Section 13

"(1) A protective measure of providing protection to a person exposed to violence may be ordered in respect of a person exposed to violence for his or her physical protection and to enable him or her to take from home his or her personal documents, clothes, money or other items necessary for everyday life.

(2) The measure under paragraph 1 of this section shall include an order to the police to escort the person exposed to violence and protect that person while he or she takes his or her personal items and to escort him or her while leaving the home.

(3) The duration of this measure shall be defined by the duration of implementation of the court order."

Ordering of protective measures

Section 16

"(1) Protective measures may be ordered at the request of a person exposed to violence or of the police, or of the court's own motion.

(2) The protective measures under section 7 (a) and (g) shall be ordered by the court of its own motion.

(3) The protective measures under this Act shall be ordered for a period which shall not be less than one month, nor shall it exceed two years from the date when a decision in minor offence proceedings has become final or from the date of completion of a prison term, if not otherwise provided under this Act."

Section 17

"(1) The protective measures under section 7 (b), (c), (d) and g) of this Act may be ordered independently even where no other sanction has been imposed.

(2) The protective measures under paragraph 1 of this section may be imposed at the request of a person who has lodged a request for minor offences proceedings to be instituted, in order to remove a direct risk to the life of persons exposed to violence or other family members.

(3) A court shall give a decision under paragraphs 1 and 2 of this section within 48 hours.

..."

Responsibility for non-compliance with a protective measure

Section 20

"(1) The perpetrators of domestic violence are obliged to comply with the protective measure [ordered against them].

(2) Persons who do not comply with the protective measure ordered against them shall be punished for a minor offence by a fine which may not be less than 3,000 Croatian kuna or by at least forty days' imprisonment.

..."

43. The relevant part of the Minor Offences Act (*Zakon o Prekršajima*, Official Gazette no. 88/2002) reads:

Section 30

"A fine may be prescribed in respect of an individual in a minimum amount of 300 Croatian kuna and a maximum amount of 10,000 Croatian kuna ..."

Section 31

"The prison term may be prescribed for a minimum duration of three days and a maximum of thirty days. On an exceptional basis, in respect of the most serious minor offences, it may be prescribed for a maximum duration of sixty days.

..."

44. The relevant provisions of the Enforcement of Prison Sentences Act (*Zakon o izvršavanju kazne zatvora*, Official Gazette nos. 128/1999 and 190/2003) read as follows:

PURPOSE OF A PRISON TERM

Section 2

"The main purpose of a prison term, apart from humane treatment and respect for the personal integrity of the person serving the prison term, ... is the development of his or her capacity to live after release in accordance with the laws and general customs of society."

INDIVIDUAL PRGRAMME FOR ENFORCEMENT OF A PRISON TERM

Section 69

(1) The individual programme for the enforcement of a prison term (hereinafter "the enforcement programme") consists of a combination of pedagogical, working, leisure, health, psychological and safety activities and measures aimed at adapting the time spent in detention to the character traits and needs of the prisoner and the type and possibilities of the particular penitentiary or prison. The enforcement programme shall be designed with a view to fulfilling the purposes of a prison term under section 7 of this Act.

(2) The enforcement programme shall be designed by the prison governor on a proposal from the penitentiary or prison expert team...

(3) The enforcement programme shall contain information on ... special procedures (... psychological and psychiatric assistance ... special security measures...)

..."

III. COUNCIL OF EUROPE DOCUMENTS

45. In its Recommendation Rec(2002)5 of 30 April 2002 on the protection of women against violence, the Committee of Ministers of the Council of Europe stated, *inter alia*, that member States should introduce, develop and/or improve where necessary national policies against violence based on maximum safety and protection of victims, support and assistance, adjustment of the criminal and civil law, raising of public awareness, training for professionals confronted with violence against women and prevention.

46. The Committee of Ministers recommended, in particular, that member States should penalise serious violence against women such as sexual violence and rape and abuse of the vulnerability of pregnant, defenceless, ill, disabled or dependent victims, as well as penalising any abuse of position by the perpetrator. The Recommendation also states that member States should ensure that all victims of violence are able to institute proceedings, make provisions to ensure that criminal proceedings can be initiated by the public prosecutor, encourage prosecutors to regard violence against women as an aggravating or decisive factor in deciding whether or not to prosecute in the public interest, ensure where necessary that measures are taken to protect victims effectively against threats and possible acts of revenge and take specific measures to ensure that children's rights are protected during proceedings.

47. With regard to violence within the family, the Committee of Ministers recommended that Member states should classify all forms of violence within the family as criminal offences and envisage the possibility of taking measures in order, *inter alia*, to enable the judiciary to adopt interim measures aimed at protecting victims, to ban the perpetrator from contacting,

communicating with or approaching the victim, or residing in or entering defined areas, to penalise all breaches of the measures imposed on the perpetrator and to establish a compulsory protocol for operation by the police, medical and social services.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2, 3 and 8 OF THE CONVENTION

48. The applicant complained that by failing to afford her adequate protection against B's violence the State authorities had failed to comply with their positive obligations. She relied on Articles 2, 3 and 8 of the Convention, the relevant parts of which read:

Article 2 – Right to life

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

..."

Article 3 – Prohibition of torture

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 8 – Right to respect for private and family life

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

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

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

B. Merits

1. The parties' submissions

50. The applicant argued that the State authorities had failed in their positive obligations under Articles 2, 3 and 8 of the Convention in respect of the acts of violence committed against her by B. She maintained that although the national courts, in both criminal and minor offences proceedings, had imposed certain sanctions and ordered certain measures, most of these had not been enforced, thereby seriously undermining any meaningful purpose of those proceedings. The national courts had also misapplied the relevant provisions of the applicable substantive and procedural law.

51. She also argued that the requirement for her to prove an immediate risk to her life in order to have a protective measure of prohibition on harassing and stalking a victim of violence applied put a disproportionate burden on her as the victim of violent acts (see paragraph 35 above). In any event the Z. Minor Offences Court had had sufficient proof of a risk to her life because at that time B had already been convicted of uttering death threats against her (see paragraph 20 above).

52. The applicant further maintained that owing to the failure of the national authorities to provide her with adequate protection against B's violence she had to live in fear for her physical integrity and for her life, had had to hide in the shelter, together with C, and had also had to move to a secret address.

53. The Government argued that in Croatia the protection of victims of domestic violence was ensured through the mechanisms of criminal law, and in particular the Protection against Domestic Violence Act. In the present case the relevant authorities had reacted to the incidents of violence against the applicant by B, had instituted several sets of both criminal and minor offences proceedings and had applied such criminal sanctions and protective measures against B as they had considered proper and suitable in the circumstances. The Government submitted that the prison term imposed on B for not paying in full the fine imposed in the decision of the Z. Minor Offences Court of 2 October 2006 had not been enforced because Z. Prison had been full to capacity. Likewise, the measure of compulsory psycho-social treatment imposed on B in the same decision had not been implemented owing to the lack of licensed individuals or agencies able to execute such a protective measure (see paragraphs 31 and 34 above).

54. In addition, the Government had adopted two national strategies for protection against domestic violence (the first one covering the period between 2005 and 2007 and the second covering the period between 2008 and 2010) which included, *inter alia*, the education of all those involved in cases of domestic violence and cooperation with the non-governmental organisations working in that field as well as financial and other support for

them. Thus, in 2008 only sixteen new shelters with a total of 329 places for the victims of violence had been established, of which six were State-funded.

2. The Court's assessment

55. The Court takes note of B's repeated violent behaviour towards the applicant. The facts in issue concern frequent episodes of violence in the period between November 2003 and June 2006, amounting to some two years and seven months. The violence was both verbal, including serious death threats, and physical, including hitting and kicking the applicant in the head, face and body, causing her injuries. In view of the fact that all the incidents of domestic violence in the present case concerned the same perpetrator and occurred in a continual manner, the Court will examine them as a continuous situation.

56. The Court takes further note of the psychiatric reports concerning B which indicated that he suffered from several mental disorders, including a severe form of PTSD, emphasised his tendency towards violence and his reduced ability to control his impulses, and reiterated the recommendation for continuing compulsory psychiatric treatment (see paragraphs 6, 12 and 13 above).

57. The above facts show that the applicant made credible assertions that over a prolonged period of time B presented a threat to her physical integrity and had actually attacked her on a number of occasions. In view of these facts, the Court considers that the State authorities had a positive obligation to protect the applicant from the violent behaviour of her (former) husband. This obligation might arise under all three Articles of the Convention relied upon, namely Articles 2, 3 and 8. However, in order to avoid further analysis as to whether the death threats against the applicant engaged the State's positive obligation under Article 2 of the Convention, as well as issues pertinent to the threshold for the purposes of Article 3 of the Convention, the Court will analyse the circumstances of the present case from the standpoint of Article 8 of the Convention.

58. In this connection the Court reiterates that there is no doubt that the events giving raise to the present application pertain to the sphere of private life within the meaning of Article 8 of the Convention. Indeed, the physical and moral integrity of an individual is covered by the concept of private life. The concept of private life extends also to the sphere of the relations of individuals between themselves. There appears, furthermore, to be no reason in principle why the notion of "private life" should be taken to exclude attacks on one's physical integrity (see *X and Y v. the Netherlands*, 26 March 1985, § 23, Series A no. 91).

59. While the essential object of Article 8 is to protect the individual against arbitrary action by the public authorities, there may in addition be positive obligations inherent in effective "respect" for private and family life and these obligations may involve the adoption of measures in the sphere of the relations of individuals between themselves (see, *mutatis mutandis*, *X and*

Y, cited above, §§ 23-24; *Mikulić v. Croatia*, no. 53176/99, § 57, ECHR 2002-I; and *Sandra Janković v. Croatia*, no. 38478/05, § 44, ECHR 2009-... (extracts)).

60. As regards respect for private life, the Court has previously held, in various contexts, that the concept of private life includes a person's physical and psychological integrity. Under Article 8 States have a duty to protect the physical and moral integrity of an individual from other persons. To that end they are to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals (see *X and Y*, cited above, §§ 22 and 23; *Costello-Roberts v. the United Kingdom*, 25 March 1993, § 36, Series A no. 247-C; *D.P. and J.C. v. the United Kingdom*, no. 38719/97, § 118, 10 October 2002; *M.C. v. Bulgaria*, no. 39272/98, §§ 150 and 152, ECHR 2003-XII; *Bevacqua and S. v. Bulgaria*, no. 71127/01, § 65, 12 June 2008; and *Sandra Janković*, cited above, § 45).

61. The Court will therefore examine whether Croatia, in dealing with the applicant's case, has been in breach of its positive obligations under Article 8 of the Convention (see, *mutatis mutandis*, *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24).

(a) Measures ordered and implemented

(i) Detention

62. As to the measures taken against B by the Croatian authorities, the Court notes that one of the measures applied against B was his pre-trial detention. Thus, in the criminal proceedings on charges of violent behaviour within the family, instituted on 21 November 2005 (see §§ 7–17 above), B was detained from 21 November to 20 December 2005. These proceedings concerned the allegations of physical and verbal violence against the applicant in the period between November 2003 and August 2005 as well as the allegations of child molestation. They are still pending.

63. In the proceedings concerning the charges of making death threats against the applicant and a policewoman, instituted on 1 March 2006 (see §§ 18-22 above), B was detained from 30 June to 24 October 2006.

(ii) Other protective measures

64. Further to B's detention, the national courts applied some other measures against him. Thus, in the last-mentioned proceedings concerning death threats against the applicant and a policewoman, the Zagreb Municipal Court also issued a restraining order against B, prohibiting access to the applicant at a distance of less than three hundred metres and prohibiting contact with the applicant.

65. In the minor offences proceedings on charges of domestic violence, instituted on 26 March 2006, the Zagreb Minor Offences Court ordered a protective measure prohibiting access to the applicant at a distance of less than one hundred metres for a period of one year (see §§ 29-35 above).

(b) Measures recommended or ordered and not followed or complied with

66. However, the Court notes that some further recommendations and measures were not followed or complied with. It must be stated at this juncture that it is not the Court's task to verify whether the domestic courts correctly applied domestic criminal law; what is in issue in the present proceedings is not individual criminal-law liability, but the State's responsibility under the Convention. The Court must grant substantial deference to the national courts in the choice of appropriate measures, while also maintaining a certain power of review and the power to intervene in cases of manifest disproportion between the gravity of the act and the results obtained at domestic level (see, *mutatis mutandis*, *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 62, 20 December 2007; *Atalay v. Turkey*, no. 1249/03, § 40, 18 September 2008; and *Beganović v. Croatia*, no. 46423/06, § 78, ECHR 2009-...).

67. In this connection the Court notes that the obligation on the State under Article 8 of the Convention in cases involving acts of violence against an applicant would usually require the State to adopt adequate positive measures in the sphere of criminal-law protection. The Court stresses that the Convention is a living instrument which must be interpreted in the light of present-day conditions and that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies (see, *mutatis mutandis*, *Selmouni v. France*, [GC], no. 25803/94, § 101, ECHR 1999-V; *Mayeka and Mitunga v. Belgium*, no. 13178/03, § 48, ECHR 2006-XI; and *Sandra Janković*, cited above, § 47). Bringing to justice perpetrators of violent acts serves mainly to ensure that such acts do not remain ignored by the relevant authorities and to provide effective protection against them.

(i) Detention

68. In the criminal proceedings instituted on 1 March 2006 the Zagreb Municipal Court, in a judgment of 16 October 2006, found B guilty on two counts of making death threats, against the applicant and against a policewoman, and sentenced him to eight months' imprisonment. B has not yet started to serve that prison term.

69. In one of the sets of minor offences proceedings on charges of domestic violence a decision was adopted on 2 October 2006 ordering the applicant to pay a fine in the amount of HRK 6,000. He paid only HRK 1,000 and the remaining HRK 5,000 was supplemented by a prison term, but B never served his prison sentence. The Government explained that this was because Z. Prison was full to capacity.

70. Instead he was arrested as late as 4 September 2009 in a separate set of criminal proceedings concerning charges of death threats against a judge and her daughter, and was placed in pre-trial detention. In these proceedings

a judgment sentencing B to three years' imprisonment was adopted on 19 October 2009.

(ii) Psychiatric treatment

71. At the same time an order was made for B to undergo psychiatric treatment. While the Court agrees that this measure was desirable, it cannot but note that it was not applied in connection with any proceedings concerning B's violence against the applicant. Furthermore, it was applied several years after the applicant had reported frequent incidents involving verbal and physical violence and death threats by B. The Court also notes that the Government have provided no information as to whether an individual programme for the execution of B's prison term was designed by the prison governor as required under section 69 of the Enforcement of Prison Sentences Act. An individual programme of this kind in respect of B takes on additional importance in view of the fact that his prison term was combined with a measure as significant as compulsory psychiatric treatment ordered by the domestic courts in relation to the serious death threats he had made (see, by way of comparison, *Branko Tomašić and Others v. Croatia*, no. 46598/06, § 56, ECHR 2009-...).

72. In this connection the Court notes that as early as December 2004 a psychiatrist who examined B found that he suffered from chronic PTSD, with symptoms that included lowered tolerance of frustration, latent aggressiveness, a worsening of his condition and impaired social functioning, in particular in family life. In another psychiatric report, dated January 2008, it was found that B was in need of continuing psychiatric control and supervision and that a regular programme of therapy would preserve his relatively stable mental condition and hence diminish the likelihood of his repeating the criminal offences and, in practical terms, remove the risk to his environment.

73. In one set of minor offences proceedings on charges of domestic violence, a decision of 2 October 2006 ordered that the applicant should undergo psycho-social treatment in order to address his mental health problems in connection with his violent behaviour (see paragraph 31 above). However, owing to the lack of licensed individuals or agencies able to execute such a protective measure, it was never enforced (see §§ 31-33 above).

(iii) Fines

74. The Court notes that the Government have not submitted any information showing that the fine of HRK 2,000 which B was ordered to pay in the minor offences proceedings on 20 November 2006 has been enforced. Further to that, in another set of minor offences proceedings, he was ordered to pay a fine in the amount of HRK 7,000 on 19 July 2007. However, the national courts allowed these proceedings to become time-barred when they were pending before the appeal court.

(c) Conclusion

75. The Court stresses that its task is not to take the place of the competent Croatian authorities in determining the most appropriate methods of protecting individuals from attacks on their personal integrity, but rather to review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation (see *Sandra Janković*, cited above, § 46).

76. In line with the principle stated above, the Court is also aware that it is for the national authorities to organise their legal systems so as to comply with their positive obligations under the Convention, and in that respect it is of course possible to conduct separate sets of criminal proceedings against the same defendant in respect of different criminal offences involving the same victim. However, in a situation such as the one in the present case, where different sets of criminal and minor offences proceedings concerned a series of violent acts by the same person, namely B, and against the same victim, namely the applicant, it appears that the requirement of effective protection of the applicant's right to respect for her private life would have been better satisfied had the authorities been in a position to view the situation as a whole. That would have given them a better overview of the situation and an opportunity of addressing the need to protect the applicant from various forms of violence in the most appropriate and timely manner.

77. The Court recognises that the national courts instituted several sets of minor offences and criminal proceedings against B, in the context of which they ordered certain measures such as periods of pre-trial detention, psychiatric or psycho-social treatment, restraining and similar orders and even a prison term. By ordering these measures the Croatian authorities showed that they considered them adequate and necessary in order to address the situation of violence against the applicant. The Court cannot but agree with that approach.

78. The national courts never overturned the measures in question or held that they were no longer necessary. However, as explained above in detail, many of these measures, such as periods of detention, fines, psycho-social treatment and even a prison term, have not been enforced (see paragraphs 68-74 above) and the recommendations for continuing psychiatric treatment, made quite early on, were complied with as late as 19 October 2009 and then in the context of criminal proceedings unrelated to the violence against the applicant. In addition, it is not certain that B has as yet undergone any psychiatric treatment (see paragraph 23 above). The Court stresses that the main purpose of imposing criminal sanctions is to restrain and deter the offender from causing further harm. However, these aims can hardly be achieved without the sanctions imposed being enforced.

79. The national authorities failed to implement measures ordered by the national courts, aimed on the one hand at addressing B's psychiatric condition, which appear to have been at the root of his violent behaviour, and on the other hand at providing the applicant with protection against further

violence by B. They thus left the applicant for a prolonged period in a position in which they failed to satisfy their positive obligations to ensure her right to respect for her private life.

80. There has accordingly been a violation of Article 8 of the Convention. In view of that finding, the Court considers that no separate issue remains to be examined under Articles 2 and 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

81. The applicant further complained of the unfairness of the criminal and minor offences proceedings instituted against B. She relied on Article 6 § 1 of the Convention, the relevant part of which provides:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

82. The Court notes that the applicant cannot rely on Article 6 of the Convention in so far as her complaint relates to criminal proceedings against third persons. Furthermore, the complaints made by the applicant have been examined above in connection with the complaint under Article 8 of the Convention.

83. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

84. The applicant alleged that she had no effective remedy in respect of her complaint under the Convention. She relied on Article 13 of the Convention, which provides:

> "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."

85. The Government contested that argument.

86. The Court notes that this complaint is linked to the one examined above under Article 8 of the Convention and must therefore likewise be declared admissible.

87. The applicant argued that because of the failure of the national authorities to enforce their own decisions adopted in various proceedings instituted against B on charges of verbal and physical violence against her, she had no effective remedy by which to obtain protection against B's violence. The Court notes that these very same issues have already been examined above under Article 8 of the Convention and have led to a finding of a violation of that Article. Therefore, the Court considers that in the specific circumstances of the present case it is not necessary to examine

whether, in this case, there has been a violation of Article 13 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

88. The applicant further complained that the relevant laws relating to domestic violence were insufficient and ineffective and that since acts of domestic violence were predominantly committed against women, those laws were also discriminatory. She relied on Article 14 of the Convention, which provides:

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

1. The parties' submissions

89. The applicant concentrated her arguments concerning the alleged violation of Article 14 on three main points. Firstly, she argued that the legislation pertinent to the incidents of domestic violence was discriminatory in that it provided for minor offences proceedings in respect of all acts of domestic violence, including instances of serious physical abuse, while such violence occurring outside a domestic context was dealt with through ordinary criminal-law mechanisms. Furthermore, although a measure of compulsory psychiatric treatment was provided for by law, in practice it had been entirely ineffective.

90. Secondly, she argued that although the Government had adopted two national strategies for protection against domestic violence (in 2005 and 2008) neither had been implemented. In that connection she stressed that the training of experts working in the context of domestic violence was insufficient and that there had been no evaluation of such training.

91. Thirdly, the applicant maintained that the statistics relating to the application of protective measures under the Protection against Domestic Violence Act showed that in 2007, in the City of Zagreb, 173 cases concerning domestic violence had been processed under that Act. In 98 of these cases a request had been made for the application of protective measures; such measures had actually been applied in only eleven cases, while in 40 cases they had been refused and in 47 cases a judge had made no comments on the request for a protective measure. The applicant submitted further official statistics showing that out of 172 sets of minor offences proceedings conducted in 2007, 132 had ended by finding both (former) spouses guilty. Of these, 70 cases had resulted in a sentence of imprisonment, 38 of which had been suspended. In the remaining 16 cases in which only one (former) spouse was found guilty, men had been the perpetrators in 14 cases

and women in 2, while the other cases had been terminated without a conviction.

92. Separate statistics were submitted regarding the length of proceedings instituted under the Protection against Domestic Violence Act before the High Minor Offences Court, which is an appeal court in minor offences cases. In 2007 that court received 1,568 cases under the said Act. In 461 cases the proceedings had lasted thirty days, in 574 cases between 31 and 60 days, in 420 cases they had lasted between 61 and 120 days and in 67 cases more than 121 days.

93. The Government argued that there had been no discriminatory treatment of the applicant by any of the authorities involved. Unlike in the *Opuz* case (see *Opuz v. Turkey*, no. 33401/02, ECHR 2009-...), the facts of the present case showed that none of the authorities had treated the incidents of violence against the applicant as a family matter they could not interfere with. Furthermore, none of the officials had in any manner tried to dissuade the applicant from pursuing her claims against B.

2. The Court's assessment

94. The Court has already accepted that a general policy or measure which is apparently neutral but has disproportionately prejudicial effects on persons or groups of persons who, as for instance in the present case, are identifiable only on the basis of gender, may be considered discriminatory notwithstanding that it is not specifically aimed at that group (see, *mutatis mutandis*, *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 154, 4 May 2001; *Hoogendijk v. the Netherlands* (dec.), no. 58461/00, 6 January 2005; and *Oršuš and Others v. Croatia* [GC], no. 15766/03, § 150, ECHR 2010-...), unless that measure is objectively justified by a legitimate aim and the means of achieving that aim are appropriate, necessary and proportionate. Furthermore, discrimination potentially contrary to the Convention may result from a *de facto* situation (see *Zarb Adami v. Malta*, no. 17209/02, § 76, ECHR 2006-VIII). Where an applicant produces *prima facie* evidence that the effect of a measure or practice is discriminatory, the burden of proof will shift on to the respondent State, to whom it falls to show that the difference in treatment is not discriminatory (see *Oršuš and Others*, cited above, § 150).

95. The Court notes that in *Opuz*, on the basis of reports submitted by the applicants and prepared by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Committee, the Diyarbakır Bar Association and Amnesty International, it found that general and discriminatory judicial passivity in Turkey, albeit unintentional, had mainly affected women, and considered that the violence suffered by the applicant and her mother could be regarded as gender-based violence which was a form of discrimination against women. Despite the reforms carried out by the Government in recent years, the overall unresponsiveness of the judicial system and the impunity enjoyed by the aggressors, as found in that case,

indicated that there had been insufficient commitment to take appropriate action to address domestic violence (see *Opuz*, cited above, § 200).

96. In support of these findings the Court relied on the Turkish Government's recognition of the general attitude of the local authorities, such as the manner in which the women were treated at police stations when they reported domestic violence, and judicial passivity in providing effective protection to victims (see *Opuz*, cited above, § 192). Furthermore, the reports submitted indicated that when victims reported domestic violence to police stations, police officers did not investigate their complaints but sought to assume the role of mediator by trying to convince the victims to return home and drop their complaint. In this connection, police officers considered the problem as a family matter with which they could not interfere (see *Opuz*, cited above, §§ 92, 96, 102 and 195). The reports also showed that there were unreasonable delays in issuing injunctions and in serving injunctions on the aggressors, given the negative attitude of the police officers. Moreover, the perpetrators of domestic violence did not seem to receive dissuasive punishments, because the courts mitigated sentences on the grounds of custom, tradition or honour (see *Opuz*, cited above, §§ 91-93, 95, 101, 103, 106 and 196).

97. The Court notes at the outset that in the present case the applicant has not submitted any reports in respect of Croatia of the kind concerning Turkey in the *Opuz* case. There is not sufficient statistical or other information disclosing an appearance of discriminatory treatment of women who are victims of domestic violence on the part of the Croatian authorities such as the police, law-enforcement or health-care personnel, social services, prosecutors or judges of the courts of law. The applicant did not allege that any of the officials involved in the cases concerning the acts of violence against her had tried to dissuade her from pursuing the prosecution of B or giving evidence in the proceedings instituted against him, or that they had tried in any other manner to hamper her efforts to seek protection against B's violence.

98. Starting from the arguments submitted by the applicant (see paragraphs 89-92 above), the Court will proceed to examine whether they disclose *prima facie* evidence of discrimination on the basis of gender.

99. As regards the applicant's arguments related to the legislative provisions covering the incidents of domestic violence, the Court stresses that it is for legislators and politicians to deal with the issues pertinent to devising general criminal policy, including the prevention of crime, in a given legal system (see *Branko Tomašić and Others*, cited above, § 73). The Court's task is to review under the Convention the decisions that those authorities have taken.

100. The Court notes that, in Croatia, incidents of domestic violence may be addressed both in minor offences proceedings and in ordinary criminal proceedings. In the Court's view, the fact that certain acts of domestic violence may be the subject of minor offences proceedings does not in itself

appear discriminatory on the basis of gender. In this connection the Court notes that various types of sanctions and measures may be applied in those proceedings, such as fines of up to HRK 10,000, a prison term of up to sixty days and the preventive measures listed in sections 7-10 of the Protection against Domestic Violence Act (see paragraph 42 above). In addition to that the criminal offence of violent behaviour within the family under Article 215a of the Criminal Code is punishable by a prison term ranging from six months to five years. In the Court's view the legislative framework in question does not show any appearance of discrimination on the basis of gender. Thus, in the present case several sets of both minor offences and criminal proceedings were instituted against B.

101. The Court has already established that not all the sanctions and measures ordered or recommended in the context of these proceedings were complied with. While this failure appears problematic from the standpoint of Article 8 of the Convention, it does not in itself disclose an appearance of discrimination or discriminatory intent on the basis of gender in respect of the applicant.

102. As regards the national strategies for protection against domestic violence adopted in 2008 and 2010, the Court notes that the applicant's allegation that the training of relevant experts had been insufficient is unsupported by any relevant examples, data or reports and cannot in itself lead to a conclusion of gender discrimination in the treatment of incidents of domestic violence in Croatia.

103. As regards the statistics concerning the implementation of protective measures, the information submitted is again incomplete and unsupported by relevant analysis and thus not capable of leading the Court to draw any conclusions on that basis. As regards the other statistics submitted, the only worrisome data is that out of 173 sets of minor offences proceedings conducted in 2007 in connection with incidents of domestic violence, in 132 sets of proceedings both spouses were found guilty. However, no such findings were made in the cases concerning the applicant.

104. Against the background described above, the Court finds that the applicant has not produced sufficient *prima facie* evidence that the measures or practices adopted in Croatia in the context of domestic violence, or the effects of such measures or practices, are discriminatory. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

105. 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

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

107. The Government deemed the amount claimed excessive and unsubstantiated.

108. Having regard to all the circumstances of the present case, the Court accepts that the applicant suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 9,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to her.

B. Costs and expenses

109. The applicant also claimed HRK 8,659.30 for the costs and expenses incurred before the Constitutional Court and HRK 23,515.60 for those incurred before the Court.

110. The Government submitted that the applicant was not entitled to any costs and expenses before the national courts.

111. 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 were actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court accepts that the applicant's constitutional complaint was aimed at remedying the situation of violation claimed by the applicant in the present case. It therefore awards the claim for costs and expenses in the domestic proceedings in the amount of EUR 1,200 and considers it reasonable to award the sum of EUR 3,270 for the proceedings before the Court, plus any tax that may be chargeable to her on those amounts.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints submitted under Articles 2, 3, 8 and 13 of the Convention admissible and the remainder of the application inadmissible;

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

3. *Holds* that there is no need to examine the complaints under Articles 2, 3 and 13 of the Convention;

4. *Holds*

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

(i) EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 4,470 (four thousand four hundred and seventy euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

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

Done in English, and notified in writing on 14 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President