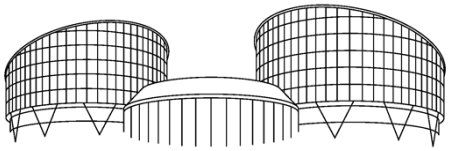

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ZUSTOVIĆ v. CROATIA

(Application no. 27903/15)

JUDGMENT

Art 6 § 1 (civil) • Judgment quashing a decision denying a disability pension and dismissing the claim for costs based on a provision of law providing that each party to judicial review proceedings bear their own costs • Provision constituting a restriction of access to court invalidated by the Constitutional Court • State having to bear the costs of the proceedings in dispute against it originating from acts in the exercise of its public authority

STRASBOURG

22 April 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Zustović v. Croatia,

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

Krzysztof Wojtyczek, *President,*
Ksenija Turković,
Alena Poláčková,
Péter Paczolay,
Gilberto Felici,
Erik Wennerström,
Raffaele Sabato, *judges,*

and Renata Degener, *Section Registrar,*

Having regard to:

the application (no. 27903/15) 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 Nisveta Zustović ("the applicant"), on 2 June 2015;

the decision to give notice to the Croatian Government ("the Government") of the complaint concerning access to a court and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 16 March 2021,

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

INTRODUCTION

1. The case concerns administrative and judicial review proceedings regarding the applicant's disability pension in which the relevant administrative court, while ruling in her favour on the merits, dismissed her claim for costs based on a provision of the Administrative Disputes Act, which, at the time, provided that each party to judicial review proceedings had to bear its own costs. That provision was later invalidated by the Constitutional Court as incompatible with the Constitution.

THE FACTS

2. The applicant was born in 1957 and lives in Kršan. She was represented by her son Mr B. Zustović, an advocate practising in Pazin.

3. The Government were represented by their Agent, Ms Š. Stažnik.

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

I. ADMINISTRATIVE AND JUDICIAL REVIEW PROCEEDINGS CONCERNING THE APPLICANT'S DISABILITY PENSION

5. On 16 February 2012 the applicant's doctor requested an assessment of her capacity to work, thereby initiating administrative proceedings before the regional office of the Croatian Pension Fund in Pula (*Hrvatski zavod za mirovinsko osiguranje, Područna služba u Puli* – hereafter "the Pula Pension Fund"). In those proceedings, the applicant was represented by her son, an advocate, who also represented her before the Court (see paragraph 2 above).

6. By a decision of 9 March 2012 the Pula Pension Fund dismissed the request, relying on the opinion of an in-house medical expert of 1 March 2012.

7. The applicant lodged an appeal with the Central Office of the Croatian Pension Fund (*Hrvatski zavod za mirovinsko osiguranje, Središnja služba* – hereafter "the Central Pension Fund").

8. After obtaining the opinion of a senior in-house medical expert on 16 May 2012, by a decision of 21 May 2012 the Central Pension Fund dismissed the applicant's appeal as ill-founded.

9. On 10 July 2012 the applicant brought an action for judicial review with the Rijeka Administrative Court (*Upravni sud u Rijeci*). She asked the court to quash the Pension Fund's decisions, rule on the merits of the case by granting her a disability pension from 16 February 2012 and award her the costs of the proceedings. She submitted that the Pension Fund's in-house experts had not interviewed her and that she had not been served with a copy of their opinions. She therefore asked the court to obtain an independent expert opinion.

10. In the judicial review proceedings, the applicant continued to be represented by her son (see paragraph 2 and 5 above). The Croatian Pension Fund was represented by its in-house lawyers.

11. On 19 December 2012 the new Scale of Advocates' Fees entered into force (see paragraph 55 below), increasing the costs of legal representation by an advocate in judicial review proceedings.

12. On 28 December 2012 the 2012 Amendments to the Administrative Disputes Act came into force. From that date section 79 provided that each party to judicial review proceedings had to bear its own costs. The new rule applied immediately to all ongoing proceedings in which the main hearing had not been closed (see paragraphs 42-43 below).

13. At a hearing on 4 October 2013 the Rijeka Administrative Court ordered an expert medical report by an independent expert.

14. On 28 January 2014 the court invited the applicant to advance, within fifteen days, 4,000 Croatian kunas (HRK) for the costs of the expert report. On 3 June 2014 the court invited her to advance further HRK 140.

15. On 11 February and 9 July 2014 respectively, the applicant paid those amounts.

16. On 29 April 2014 an independent medical expert carried out an expert medical assessment and found that the applicant's health had deteriorated to the extent that she had completely and permanently lost her capacity to work.

17. At a hearing held on 3 June 2014 the Rijeka Administrative Court heard the medical expert, who stated that he could not determine exactly when the applicant had lost her capacity to work. He was however certain that at the time of adoption of the Pula Pension Fund's decision of 9 March 2012 (see paragraph 6 above) she had been incapable of working.

18. At a hearing held on 21 August 2014 the applicant, represented by her son as her advocate, asked the court to award her the costs of the proceedings. She submitted that section 79 of the Administrative Disputes Act, which at the time provided that each party had to bear its own costs (see paragraph 42 below), was contrary to the Constitution because it unduly restricted the right of access to a court and disturbed procedural equality between the parties. The applicant thus asked the court to apply section 79 in its original wording (that is, before the entry into force of the 2012 Amendments, see paragraph 41 below) and award her HRK 26,015 for the costs of the proceedings, consisting of the costs of her legal representation and the costs of the expert report (HRK 4,140, see paragraphs 14-15 above).

19. By a judgment adopted on the same day, 21 August 2014, the Rijeka Administrative Court quashed the Pension Fund's decisions of 9 March and 21 May 2012 (see paragraphs 6 and 8 above) and remitted the case for fresh consideration. It ordered the Pula Pension Fund to decide on the applicant's right to a disability pension on the basis of the report obtained from the independent medical expert in the judicial review proceedings (see paragraph 16 above). At the same time, it dismissed the applicant's claim for the costs of the proceedings. It referred to section 79 of the Administrative Disputes Act as in force at the material time (see paragraph 12 above and paragraph 42 below), which it did not consider contrary to the right to a fair hearing guaranteed by the Croatian Constitution and the Convention.

20. The Rijeka Administrative Court's judgment was served on the applicant's representative on 9 September 2014.

21. On 9 October 2014 the applicant lodged a constitutional complaint against the part of that judgment containing the ruling on costs. She complained, *inter alia*, that her right to a fair hearing, in particular her right of access to a court and the right to procedural equality, as guaranteed by Article 29 of the Croatian Constitution and Article 6 § 1 of the Convention, had been violated when the Rijeka Administrative Court, while ruling in her favour, had refused to award her the costs of the proceedings. In so doing,

she repeated, in substance, the arguments she had advanced before that court (see paragraph 18 above). She also relied on the Court's judgment in the case of *Airey v. Ireland* (9 October 1979, Series A no. 32).

22. By a decision of 18 November 2014 the Constitutional Court declared the constitutional complaint by the applicant inadmissible, on the grounds that the contested decision did not concern the merits of the case and, as such, was not amenable to constitutional review. On 2 December 2014 it served its decision on the applicant's representative.

23. In the resumed proceedings, the Pula Pension Fund decided to obtain the opinion of a medical expert to determine the exact date on which the applicant had lost her capacity to work (see paragraph 17 above).

24. On 3 March 2015 the Pula Pension Fund granted the applicant a disability pension in the amount of HRK 1,322.89 per month starting from 1 March 2012, on the grounds of her permanent incapacity to work. In deciding this, it referred to the opinion of an in-house medical expert, who had established that she had lost her capacity to work in March 2012.

25. On 30 March 2015 the Pula Pension Fund ordered that the applicant be paid the pension instalments due for the period 1 March 2012 to 30 March 2015.

26. Considering that her pension should have been higher and that she was entitled to the statutory default interest accrued on the pension instalments due in the above-mentioned period, the applicant appealed against the Pula Pension Fund's decision of 3 March 2015 (see paragraph 24 above).

27. By a decision of 26 August 2015 the Central Pension Fund allowed the applicant's appeal, quashed the Pula Pension Fund's decision of 3 March 2015 (see paragraph 24 above) and remitted the case for fresh consideration.

28. Considering that her appeal had been allowed only in part, the applicant brought a second action for judicial review against the Central Pension Fund's decision of 26 August 2015.

29. On 27 September 2016 the Constitutional Court invalidated, as contrary to the Constitution, section 79 of the Administrative Disputes Act, as amended by the 2012 Amendments (see paragraph 12 above and paragraphs 42-43 below).

30. By a judgment of 12 December 2017 the Rijeka Administrative Court quashed the contested decision of 26 August 2015 (see paragraph 27 above) and remitted the case for fresh consideration. The court also awarded the applicant HRK 3,125 for the costs of her second action for judicial review (see paragraph 28 above).

31. By a decision of 19 April 2018 of the High Administrative Court overturned the ruling on costs and, referring to its opinion of 12 February 2018 (see paragraph 50 below), ordered that each party bear its own costs.

32. The applicant then lodged a second constitutional complaint in these proceedings, challenging the High Administrative Court's decision.

33. This time the Constitutional Court allowed the constitutional complaint and, by a decision of 5 June 2019, quashed the High Administrative Court's decision of 19 April 2018 (see paragraph 31 above) and remitted the case for fresh consideration. It referred to its decision of 9 April 2019 (see paragraph 51 below), reiterating that the High Administrative Court's opinion of 12 February 2018 (see paragraph 50 below) and the decisions based on it were in breach of the right of access to a court.

II. OTHER RELEVANT PROCEEDINGS

34. In 2017 the applicant – represented by her son as her advocate – brought an action for judicial review in the Rijeka Administrative Court against a decision of the Croatian Health Insurance Fund of 15 November 2017. By a judgment of 17 May 2018 the court ruled in her favour, quashed the contested decision of the Fund and remitted the case for fresh consideration. Referring to the High Administrative Court's opinion of 12 February 2018 (see paragraph 50 below), it however dismissed the applicant's claim for the costs of the judicial review proceedings and ordered that each party bear its own costs. The applicant then appealed against the ruling on costs, but her appeal was dismissed by a decision of the High Administrative Court of 17 May 2018.

35. However, on 5 June 2019, upon the applicant's constitutional complaint (see paragraph 33 above), the Constitutional Court quashed the High Administrative Court's decision of 17 May 2018 (see paragraph 34 above) and remitted the case for fresh consideration. It referred to its decision of 9 April 2019 (see paragraph 51 below), reiterating that the High Administrative Court's opinion of 12 February 2018 (see paragraph 50 below) and the decisions based on it were in breach of the right of access to a court.

36. In the resumed judicial review proceedings, the High Administrative Court first, on 12 September 2019, quashed the Rijeka Administrative Court's ruling on costs of 17 May 2018 (see paragraph 34 above) and remitted the case for fresh consideration. In a decision of 27 September 2019 the latter awarded the applicant the costs of the judicial review proceedings, consisting of the costs of her legal representation by an advocate.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CONSTITUTION

37. The relevant provisions of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette no. 56/90 with subsequent amendments) read as follows:

Article 115 § 3

"The courts shall decide [cases] on the basis of the Constitution, statute, international agreements and other valid sources of law."

Article 134

"International agreements in force which have been concluded and ratified in accordance with the Constitution and made public shall be part of the internal legal order of the Republic of Croatia and shall have precedence in terms of their legal effects over the [domestic] statutes ..."

II. CONSTITUTIONAL COURT ACT

38. The relevant provisions of the Constitutional Act on the Constitutional Court of the Republic of Croatia (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette of the Republic of Croatia no. 99/99 with subsequent amendments – "the Constitutional Court Act") read as follows:

III. REVIEW OF THE CONSTITUTIONALITY OF STATUTES AND THE CONSTITUTIONALITY AND LEGALITY OF SUBORDINATE LEGISLATION

Section 35

"An application instituting proceedings before the Constitutional Court [application for constitutional review] may be submitted by:

- ...;

- the Supreme Court of the Republic of Croatia or other court, if the issue of constitutionality and legality has arisen in proceedings before that court;

- .."

Section 37(1)

"If a court in the proceedings finds that the statute to be applied or some of its provisions are not in conformity with the Constitution, it shall stay the proceedings and lodge an application with the Constitutional Court to review the conformity of the statute or its specific provisions with the Constitution."

Section 38

"Every natural or legal person has the right to propose the institution of proceedings to review the constitutionality of statutes [petition for constitutional review] ...

The Constitutional Court may of its own motion institute proceedings to review the constitutionality of statutes...”

Section 55

“(1) The Constitutional Court shall invalidate a statute or its provisions if it finds that they are incompatible with the Constitution ...

(2) Unless the Constitutional Court decides otherwise, the invalidated statute or its provisions shall cease to have legal force on the date of publication of the Constitutional Court’s decision in the Official Gazette.”

Section 58(2) and (4)

“(2) Every natural or legal person who has lodged with the Constitutional Court a petition to review the constitutionality of a statutory provision, or the constitutionality or legality of a provision of subordinate legislation, and whose petition has been accepted by the Constitutional Court and [that] provision invalidated, has a right to lodge with the relevant authority [a request to reopen the proceedings] and ask that the decision based on the invalidated ... provision ... be set aside.

..

(4) [The request to reopen the proceedings] referred to in paragraphs 2 and 3 ... may be lodged within six months of the publication of the Constitutional Court’s decision in the Official Gazette.”

III. ADMINISTRATIVE DISPUTES ACT

A. Relevant provisions

39. The Administrative Disputes Act (*Zakon o upravnim sporovima*, Official Gazette no. 20/10 with further amendments), which governs judicial review proceedings (administrative disputes), has been in force since 1 January 2012.

1. Provision governing the costs of proceedings and its amendments

40. Section 79 of the Administrative Disputes Act governs the costs of judicial review proceedings. Under Croatian law, there are two types of judicial decisions: judgments (*presude*) and rulings (*rješenja*). The courts decide on the merits of a case by a judgment and on procedural issues by a ruling. The costs of proceedings are always decided by a ruling even when the decision on costs is incorporated in a judgment. In such cases, the point in the operative provisions of a judgment in which the court decides on costs is considered to be a ruling. The consequence of this distinction is that when legislation allows a certain remedy to be lodged only against a judgment, it means that the same remedy is not available against the part of a judgment concerning a decision on costs, that part being considered a ruling.

(a) Original wording

41. In its original wording, section 79 of the Administrative Disputes Act provided:

Costs of judicial review proceedings
Section 79

"(1) The costs of the proceedings are the disbursements made during or in relation to the proceedings. The costs of the proceedings also include fees for the services of advocates and other persons legally entitled to remuneration.

(2) Each party shall advance the costs incurred by his or her actions, unless otherwise provided by law. Costs incurred as a result of the court acting of its own motion shall be advanced from the court's budget.

(3) A party who loses a case completely shall bear the costs of the proceedings in full, unless otherwise provided by law. If a party succeeds in the proceedings in part, the court may, having regard to the success achieved, order that each party bear its own costs, that one party reimburse the other party the corresponding part of the costs or that the costs be apportioned in proportion to success in the proceedings.

(4) A party who withdraws an action, appeal or other motion which has resulted in costs being incurred by the other parties shall also bear those parties' costs.

(5) In deciding which costs shall be reimbursed to a party, the court shall take into account only the costs which were necessary for the conduct of the proceedings."

(b) 2012 Amendments to the Administrative Disputes Act

42. Section 79 was amended by the 2012 Amendments to the Administrative Disputes Act (*Zakon o izmjenama i dopunama Zakona o upravnim sporovima*, Official Gazette no. 143/2012 – "the 2012 Amendments"), which entered into force on 28 December 2012. The text of section 79, as amended by the 2012 Amendments, read as follows:

Costs of judicial review proceedings
Section 79

"In judicial review proceedings, each party shall bear its own costs."

43. The Amendments provided for their immediate application to all ongoing proceedings in which the main hearing had not been closed.

(c) 2017 Amendment to the Administrative Disputes Act

44. In order to comply with the Constitutional Court's decision of 27 September 2016 (see paragraph 29 above and paragraph 48 below), Croatian Parliament adopted the 2017 Amendment to the Administrative Disputes Act (*Zakon o izmjeni i dopuni Zakona o upravnim sporovima*, Official Gazette no. 29/2017 – "the 2017 Amendment"), which entered into force on 31 March 2017. The wording of section 79, as amended by 2017

Amendment, is largely identical to the original wording of that provision (see paragraph 41 above), and reads as follows:

Costs of judicial review proceedings
Section 79

"(1) The costs of the proceedings are justified disbursements made during or in relation to the proceedings. The costs of the proceedings also include fees for the services of advocates and other persons legally entitled to remuneration.

(2) The value of the subject matter of the dispute shall be considered undeterminable.

(3) Each party shall advance the costs incurred by his or her actions, unless otherwise provided by law. Costs incurred as a result of the court acting of its own motion shall be advanced from the court's budget.

(4) A party who loses a case completely shall bear the costs of the proceedings in full, unless otherwise provided by law. If a party succeeds in the proceedings in part, the court may, having regard to the success achieved, order that each party bear its own costs, that one party reimburse the other party the corresponding part of the costs or that the costs be apportioned in proportion to success in the proceedings.

(5) A party who withdraws an action, appeal or other motion which has resulted in costs being incurred by the other parties shall also bear those parties' costs.

(6) The court may decide on the costs of the proceedings together with the decision on the merits or by a separate ruling within fifteen days of the date of pronouncement of the judgment.

(7) An appeal is allowed against the ruling referred to in paragraph 6 ...."

45. The Amendment provided for its immediate application to all ongoing proceedings.

2. Other relevant provisions

46. Under section 24 of the Administrative Disputes Act, an action for judicial review must be brought within thirty days of service of the decision being contested.

47. Section 76 allows for the possibility to reopen judicial review proceedings on the basis of a judgment of the European Court of Human Rights. The text of that provision is reproduced in the case of *Guberina v. Croatia* (no. 23682/13, § 28, ECHR 2016).

B. Relevant practice

1. The Constitutional Court's decision of 27 September 2016 invalidating the 2012 Amendments

48. Following an application for constitutional review lodged in 2014 by the High Administrative Court, and a number of petitions for such review lodged in the period between 2012 and 2014 by the Croatian Bar

Association, the Association of Corporate Lawyers, several advocates and some other petitioners, by a decision of 27 September 2016 the Constitutional Court invalidated, as contrary to the Constitution, section 79 of the Administrative Disputes Act, as amended by the 2012 Amendments (see paragraph 42 above). The relevant part of its decision reads as follows:

> "...the manner of legal regulation of reimbursement of the costs of proceedings is one of the components of the right of access to justice, which is immanent to the right to a fair hearing [guaranteed by] Article 29 [§ 1] of the Croatian Constitution and Article 6 of the Convention...
>
> ...
>
> ... judicial review proceedings ... usually require the parties to seek legal assistance provided by advocates.
>
> ... such proceedings cannot be fair unless it is ensured that the losing party pays the costs of the proceedings to the opposing party, which are, in essence, caused by an unlawful decision or action of the State or public authorities.
>
> ...
>
> ... the Constitutional Court finds that the amendment of the original section 79 of the Administrative Disputes Act did not have a legitimate aim, and was aimed at protecting the financial interests of the State (since it is precisely the State that must bear the costs of the proceedings in the event of losing the case).
>
> ... the right of access to a court is not absolute. It is subject to restrictions ....
>
> In the present case, the restriction imposed by the [2012 Amendments] was without objective, legitimate and constitutionally justified reasons.
>
> For these reasons, the Constitutional Court invalidates section 79 of the Administrative Disputes Act ..."

49. The Constitutional Court deferred the effects of its decision by giving the Croatian Parliament until 31 March 2017 to amend the unconstitutional provision. Parliament did so by adopting the 2017 Amendment to the Administrative Disputes Act (see paragraph 44 above).

2. Other relevant practice

50. At a session on 12 February 2018 the High Administrative Court adopted an opinion that when an administrative court or the High Administrative Court in judicial review proceedings quashes a decision of a public authority and remits the case for fresh consideration (as opposed to the situation where it rules on the matter itself by replacing the contested decision of a public authority), each party has to bear its own costs.

51. In decision no. U-III-2086/2018 of 9 April 2019 the Constitutional Court allowed a constitutional complaint and quashed a decision based on that opinion whereby the Split Administrative Court had decided that each party had to bear its own costs. The Constitutional Court held that the effects of that opinion were the same as those of the invalidated section 79 of the Administrative Disputes Act as amended by the 2012

Amendments (see paragraph 42 above). Therefore, that opinion and the contested decision based on it were in breach of the complainants' right of access to a court.

IV. OTHER LEGISLATION

52. Under the Court Fees Act (*Zakon o sudskim pristojbama*, Official Gazette no. 74/95 with further amendments), as in force at the relevant time, plaintiffs had to pay HRK 500 to bring an action for judicial review and pay the same amount of court fees for the judgment delivered in those proceedings. However, plaintiffs in judicial review proceedings relating to pensions and disability insurance were exempt from court fees.

53. Under section 8(1) of the Legal Aid Act (*Zakon o besplatnoj pravnoj pomoći*, Official Gazette no. 62/08 with further amendments), which was in force between 7 June 2008 and 31 December 2013, persons requesting legal aid were not eligible for it if they or an adult member of their household owned another house or flat than the one in which they lived.

54. Under the Advocates Act (*Zakon o odvjetništvu*, Official Gazette no. 9/94 with further amendments), the Croatian Bar Association had to ensure free legal assistance (*pro bono* representation by an advocate) to war victims and socially vulnerable individuals in cases in which such persons were exercising rights related to their status, as well as in other cases specified in the Bar Association's internal regulations. The information notice on the website of the Croatian Bar Association specifies that submitting a request for *pro bono* representation does not interrupt the running of statutory time-limits, for example, those prescribed for bringing actions or lodging legal remedies.

55. The Scale of Advocates' Fees (*Tarifa o nagradama i naknadi troškova za rad odvjetnika*, Official Gazette no. 142/12 with further amendments), which entered into force on 19 December 2012, provides that:

- an advocate must apply the scale applicable at the time of charging the fees (section 48(1)); and
- when the court or other authority decides on the costs of the proceedings, it must apply the scale in force at the time of adoption of the decision on costs (section 48(3)).

THE LAW

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

56. The applicant complained that her right to a fair hearing had been violated on account of her inability to obtain reimbursement of the costs of the judicial review proceedings in which the domestic courts had ruled in

her favour. She relied on Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

57. The Government disputed the admissibility of this complaint on two grounds. They argued the applicant had not complied with the six-month rule and, alternatively, that she had failed to exhaust domestic remedies.

1. Compliance with the sixth-month rule

(a) Submissions by the parties

58. In their observations of 19 January 2017 the Government submitted that the applicant had failed to comply with the six-month rule because she had wrongly believed that the constitutional complaint she had lodged on 9 October 2014 (see paragraph 21 above) was an effective remedy to be exhausted for the purposes of Article 35 § 1 of the Convention and thus capable of interrupting the running of the six-month time-limit prescribed by that Article.

59. They explained that under the well-established case-law of the Constitutional Court a constitutional complaint could not be lodged against a ruling on the costs of proceedings. The applicant's legal representative should have been aware of that.

60. Consequently, the final decision within the meaning of Article 35 § 1 of the Convention, for the purposes of calculating the six-month time-limit in the applicant's case, was not the Constitutional Court's decision of 18 November 2014 (see paragraph 22 above), but the Rijeka Administrative Court's decision of 21 August 2014, which had been served on her representative on 9 September 2014 (see paragraphs 19-20 above). However, her application to the Court had been lodged on 2 June 2015, that is, more than six months later.

61. The applicant replied that it could be seen from the case of *Kardoš v. Croatia* (no. 25782/11, §§ 31-39, 26 April 2016) that the Court had already had the opportunity to address a similar inadmissibility objection by the Government and that it had each time rejected that argument because accepting it would have disregarded the fact that the Constitutional Court's practice could evolve. The applicant thus specifically referred to the reasons given by the Court in that judgment, which she considered equally applicable in her case (she also relied on the Court's judgment in the case of *Pavlović and Others v. Croatia*, no. 13274/11, §§ 30-38, 2 April 2015).

62. In their comments of 10 April 2017 to the applicant's observations the Government retorted that for the practice to evolve, there had to be an argument to that effect. However, even though the applicant had been represented by a qualified representative, in her constitutional complaint of 9 October 2014 (see paragraph 21 above) she had not raised any argument that would have prompted the Constitutional Court to develop its case-law and change its position.

63. In her factual update of 22 October 2019 the applicant informed the Court of the further developments in the proceedings complained of (see paragraphs 30-33 above) and of the concurrent judicial review proceedings against the Croatian Health Insurance Fund (see paragraphs 34-36 above). She emphasised that in both sets of proceedings the Constitutional Court had not only allowed her constitutional complaint but had also quashed the contested rulings on costs (see paragraphs 33 and 35 above).

64. To that, the Government replied that at the time of adoption of the Rijeka Administrative Court's decision of 21 August 2014 the Constitutional Court's case-law to the effect that rulings on costs were not amenable to constitutional review had been uniform and consistent, allowing for no exceptions. They thus maintained their argument (see paragraphs 58-60 above) that the Rijeka Administrative Court's judgment of 21 August 2014 (see paragraph 19 above) was the last domestic decision in the applicant's case and that by lodging her application with the Court on 2 June 2015 she had failed to comply with the six-month rule.

(b) The Court's assessment

65. The Court has indeed, as pointed out by the applicant (see paragraph 61 above), already had an opportunity to address a similar inadmissibility objection raised by the Government in a number of cases against Croatia, and each time has rejected it (see, notably, *Pavlović and Others*, cited above, §§ 30-38, 2 April 2015, and *Vrtar v. Croatia*, no. 39380/13, §§ 75-76, 7 January 2016 and the cases cited therein). It sees no reason to hold otherwise in the present case.

66. In addition, in the *Vrtar* case the Court held that it would be contrary to the principle of subsidiarity to hold that a constitutional complaint should not have been exhausted just because at the time the Constitutional Court's practice suggested that the decision being contested was not amenable to constitutional review. To do so would not only ignore the fact that such practice may evolve but would, more importantly, remove any incentive for such evolution as applicants would systematically address their complaints to the Court without giving a chance to the Constitutional Court to change its practice (see *Vrtar*, cited above, § 76). In the present case, the Constitutional Court's decision in the subsequent course of the proceedings complained of and that in the concurrent judicial review proceedings where that court examined the applicant's constitutional complaints lodged against

the rulings on costs (see paragraphs 33 and 35 above) only reinforce this view and the resulting conclusion that she cannot be blamed for lodging her first constitutional complaint on 9 October 2014 (see paragraph 21 above) against the ruling on costs of 21 August 2014 (see paragraph 19 above) and thus giving the Constitutional Court an opportunity to redress the alleged violation of her right of access to a court.

67. It follows that the Government's objection regarding non-compliance with the six-month rule must be rejected.

2. *Exhaustion of domestic remedies*

(a) Submissions by the parties

(i) The Government

68. The Government submitted that the applicant had not exhausted domestic remedies in that she had not lodged a petition for constitutional review under section 58(2) of the Constitutional Court Act (see paragraph 38 above) asking the Constitutional Court to review whether section 79 of the Administrative Disputes Act, as amended by the 2012 Amendments (see paragraph 42 above), was in conformity with the Croatian Constitution. Had she done so, she would have been able, after the Constitutional Court had invalidated that provision (see paragraphs 29 and 48 above), to seek the reopening of the judicial review proceedings under section 58(4) of the Constitutional Court Act (see paragraph 38 above) and have the ruling on costs overturned.

69. In this connection, the Government noted that at the hearing of 21 August 2014 before the Rijeka Administrative Court the applicant had argued that section 79 of the Administrative Disputes Act, as amended by the 2012 Amendments, was contrary to the Croatian Constitution (see paragraph 18 above). She repeated the same argument in her constitutional complaint (see paragraph 21 above). In view of the Constitutional Court's case-law that a constitutional complaint could not be lodged against a ruling on the costs of proceedings (see paragraph 59 above), the Government averred that the lodging of a petition for constitutional review had had much greater chances of success.

70. The Government further submitted the Rijeka Administrative Court had not had the power to apply the Constitution directly to override the statutory provision. That court could have only lodged an application for constitutional review of the impugned provision (see section 37(1) of the Constitutional Court Act, cited in paragraph 38 above). However, the applicant could not have expected it to do so as that would have required it to stay the proceedings (ibid.) – which had been of existential importance for her – *sine die* as it could not have predicted when the Constitutional Court would deliver a decision on such an application. Contrary to the

applicant's argument (see paragraph 72 below), a partial stay of the proceedings would not have been possible.

(ii) The applicant

71. The applicant replied that it was unreasonable to say that she should have lodged a petition for constitutional review, as the Government had suggested, in a situation where she had already raised all the relevant Convention and Constitution-based arguments in the judicial review proceedings complained of in which she had also lodged a constitutional complaint (see paragraphs 18 and 21 above).

72. Faced with her arguments, the Rijeka Administrative Court could itself have lodged an application for constitutional review (see section 37(1) of the Constitutional Court Act, cited in paragraph 38 above). In so doing, that court could have stayed the judicial review proceedings just in the part regarding costs and could have continued the examination of the case in the part concerning her disability pension.

73. Likewise, following her constitutional complaint, the Constitutional Court could have instituted constitutional review proceedings of its own motion (see section 38(2) of the Constitutional Court Act, cited in paragraph 38 above).

74. Lastly, the applicant submitted that lodging the petition suggested by the Government would have led to an abstract review of the constitutionality of section 79 of the Administrative Disputes Act as in force at the time (see paragraph 42 above), whereas she had complained of a breach of the Convention in her particular case and in that regard had exhausted all the available remedies.

75. In any event, even if she had lodged such a petition, that would not have interrupted the running of the six-month time-limit, which, according to the Government (see paragraphs 58-60 above), had started to run from service of the Rijeka Administrative Court's judgment of 21 August 2014.

(b) The Court's assessment

76. The Court considers that, for the reasons set out below (see paragraphs 77-81), it may leave open the issue whether a petition for constitutional review under Croatian law could be regarded as an effective remedy which applicants must use in order to comply with their obligation under Article 35 § 1 of the Convention to exhaust domestic remedies. That is so because even assuming that such a petition can be considered an effective remedy, the applicant did not have to use it in the present case.

77. The Court reiterates that that if more than one potentially effective remedy is available, the applicant is only required to have used one of them (see *Moreira Barbosa v. Portugal* (dec.), no. 65681/01, ECHR 2004‑V (extracts); *Jeličić v. Bosnia and Herzegovina* (dec.), no. 41183/02,

ECHR 2005‑XII (extracts); *Karakó v. Hungary*, no. 39311/05, § 14, 28 April 2009; and *Aquilina v. Malta* [GC], no. 25642/94, § 39, ECHR 1999 III). Indeed, when one remedy has been attempted, use of another remedy which has essentially the same purpose is not required (see *Riad and Idiab v. Belgium*, nos. 29787/03 and 29810/03, § 84, 24 January 2008; *Kozacıoğlu v. Turkey* [GC], no. 2334/03, §§ 44 et seq., 19 February 2009; *Micallef v. Malta* [GC], no. 17056/06, § 58, ECHR 2009; and *Lagutin and Others v. Russia*, nos. 6228/09 and 4 others, § 75, 24 April 2014). It is for the applicant to select the remedy that is most appropriate in his or her case (see *O'Keeffe v. Ireland* [GC], no. 35810/09, §§ 110-111, ECHR 2014 (extracts)). To sum up, if domestic law provides for several parallel remedies in different fields of law, an applicant who has sought to obtain redress for an alleged breach of the Convention through one of these remedies is not necessarily required to use others which have essentially the same objective (see *Jasinskis v. Latvia*, no. 45744/08, §§ 50 and 53-54, 21 December 2010).

78. In this connection, the Court notes that the applicant argued before the Rijeka Administrative Court that section 79 of the Administrative Disputes Act, as amended by the 2012 Amendments, was in breach of the right of access to a court and thus contrary to the Croatian Constitution and Article 6 § 1 of the Convention (see paragraph 18 above). She thus raised the same complaint as in her subsequent application to the Court (see paragraph 56 above). The Rijeka Administrative Court in its judgment of 21 August 2014 expressly addressed that argument and dismissed it, finding that the impugned provision was not contrary to the Croatian Constitution or the Convention (see paragraph 19 above).

79. Had it agreed with the applicant, the Rijeka Administrative Court could have either stayed the proceedings and lodged an application for constitutional review with the Constitutional Court (see section 37(1) of the Constitutional Court Act, cited in paragraph 38 above), or would have applied the Convention directly, it being understood that the Convention forms an integral part of the Croatian legal system in which it takes precedence over domestic statutes and is directly applicable (see Articles 115 § 3 and 134 of the Croatian Constitution, cited in paragraph 37 above; see also *Habulinec and Filipović v. Croatia* (dec.), no. 51166/10, 4 June 2013, and *Bogunović v. Croatia* (dec.), no. 18221/03, 11 July 2006).

80. The Court also notes that in her constitutional complaint of 9 October 2014 the applicant repeated, in substance, the same arguments she had advanced before the Rijeka Administrative Court (see paragraphs 18, 21 and 78 above and compare with *Popović and Others v. Serbia*, nos. 26944/13 and 3 others, § 60, 30 June 2020). At that time the proceedings for constitutional review of section 79 of the Administrative Disputes Act, as amended by the 2012 Amendments, were already under way (see paragraph 48 above). The Constitutional Court

could have thus deferred the examination of the applicant's constitutional complaint until it rendered a decision in those proceedings.

81. The applicant thus provided the domestic courts with sufficient opportunity to remedy the alleged violation of her right of access to a court. Consequently, having regard to the Court's case-law (see paragraph 77 above), the applicant could not have been required to pursue yet another avenue of potential redress by lodging a petition for constitutional review.

82. It follows that the Government's objection regarding the exhaustion of domestic remedies must be rejected.

3. Conclusion as regards admissibility

83. The Court notes that the present application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The applicant

84. The applicant submitted that she was a lay person and thus could not have instituted judicial review proceedings and presented her case effectively without the assistance of an advocate. At the time she had brought her action for judicial review she had been unemployed and in bad health and had lost her capacity to work (see paragraph 9, 16-17 and 24 above). She had therefore had no income and could not have afforded the costs of representation by an advocate. She had nevertheless instituted those proceedings only because under section 79 of the Administrative Disputes Act, as in force at the time (see paragraph 41 above), she could have shifted payment of the litigation costs onto the defendant authority if the court had ruled in her favour. She had been successful in the proceedings, but the Rijeka Administrative Court had nevertheless dismissed her claim for costs (see paragraph 19 above) because, in the meantime, the 2012 Amendments to the Administrative Disputes Act had entered into force, providing that each party in judicial review proceedings had to bear its own costs (see paragraphs 12 and 42 above).

85. Denying her the ability to shift the costs of her legal representation onto the defendant authority and recoup from it the costs of the expert report, both of which had been instrumental in her success in the proceedings, could not be considered to be in compliance with the right to a fair hearing. In that way, she been had denied access to a court and placed in a disadvantaged position compared to the opposing party, the Croatian Pension Fund, which had been represented by lawyers from its legal

department who dealt with pension and disability insurance cases on a daily basis.

86. In support of her arguments, the applicant pointed out that the Constitutional Court in its decision of 27 September 2016 had invalidated, as contrary to the Constitution, section 79 of the Administrative Disputes Act, as amended by the 2012 Amendments (see paragraphs 29 and 48 above). She referred to the Constitutional Court's finding that the rule providing that each party had to bear its own costs in judicial review proceedings had unduly restricted the right of access to a court and had not had a legitimate aim but had served only to protect the financial interests of the State (see paragraph 48 above).

87. In her view, the mere fact that that rule had thus not pursued a legitimate aim was sufficient for the Court to find a breach of Article 6 § 1 of the Convention.

88. As regards the Government's argument that the Rijeka Administrative Court had applied the impugned provision because there had been no other provision it could have applied at the relevant time (see paragraph 92 below), the applicant replied that the court could have applied the Convention directly (she referred to Articles 115 § 3 and 134 of the Croatian Constitution, cited in paragraph 38 above).

89. As regards the Government's doubts as to whether she had actually paid the costs of her legal representation (see paragraph 94 below), the applicant presented an invoice dated 9 October 2014 for those costs and explained that, regardless of the fact that she had been represented by her son, he had been obliged to issue an invoice for the services rendered and she had had to pay him for those services.

90. As regards the Government's argument that she should have applied for legal aid (see paragraph 95 below), the applicant responded that, apart from the house in which they lived, her husband owned another house which had made her ineligible both for legal aid under the Legal Aid Act and *pro bono* representation provided by the Croatian Bar Association (see paragraphs 53-54 above). In any event, even if she had applied for legal aid, it was very likely that her request would not have been granted in time, given that the time-limit for bringing an action for judicial review was only thirty days from service of the contested decision (see paragraph 46 above).

(a) The Government

91. The Government submitted that the fact that the Constitutional Court in its decision of 27 September 2016 had invalidated, as contrary to the Constitution, section 79 of the Administrative Disputes Act, as amended by the 2012 Amendments (see paragraphs 29, 41 and 48 above), did not mean that there had been a violation of Article 6 § 1 of the Convention in the applicant's case.

92. They argued that:

- the Rijeka Administrative Court had applied that section as it had been the only provision it could have applied at the relevant time;

- the applicant had not been restricted in instituting judicial review proceedings; and

- she could have applied for legal aid and asked the State to bear the costs of her legal representation or, at least, the costs of the expert report.

93. The Government stressed that the applicant had been exempt from paying the court fees normally chargeable on bringing an action for judicial review and delivery of a judgment, which would have in total amounted to HRK 1,000 (see paragraph 52 above), the sum constituting some 25% of the costs of the expert report she had had to pay (see paragraphs 14-15 above).

94. As regards the costs of the applicant's legal representation, the Government noted that she and her representative were related (see paragraphs 2 and 10 above) and thus expressed doubts as to whether she had indeed paid those costs. The mere fact that he had issued and submitted to the Court an invoice in respect of those costs (see paragraph 89 above) was not evidence that she had actually paid them.

95. In any event, it had been the applicant who had decided to hire an advocate. As an unemployed person without other sources of income (see paragraph 84 above), she could have either applied for legal aid under the Legal Aid Act (which would have also covered the costs of the expert report) or asked the Croatian Bar Association to assign her an advocate to represent her *pro bono* under the Advocates' Act (see paragraphs 53-54 above). In this way, the applicant could have shifted payment of those costs onto the State. To do so had been particularly important in her case, where she had complained of a breach of her right of access to a court on account of having to bear, *inter alia*, the costs of her legal representation.

2. The Court's assessment

(a) General principles

96. The Court reiterates that the Convention is intended to guarantee practical and effective rights. This is particularly so of the right of access to a court in view of the prominent place held in a democratic society by the right to a fair trial. It is central to the concept of a fair trial, in civil as in criminal proceedings, that a litigant is not denied the opportunity to present his or her case effectively before the court and that he or she is able to enjoy equality of arms with the opposing side (see *Steel and Morris v. the United Kingdom*, no. 68416/01, § 59, ECHR 2005-II).

97. Article 6 § 1 leaves to the State a free choice of the means to be used in guaranteeing litigants the above rights (ibid. § 60).

98. The Court further reiterates that the imposition of a considerable financial burden after the conclusion of proceedings may constitute a restriction on the right to a court guaranteed by Article 6 § 1 of the

Convention (see *Stankov v. Bulgaria*, no. 68490/01, § 54, 12 July 2007 where the applicant was ordered to pay court fees, and *Klauz v. Croatia*, no. 28963/10, § 77, 18 July 2013 where the applicant was ordered to reimburse the costs of the State's representation by the State Attorney's Office payable into the State budget). Imposition of such financial burden can also amount to an interference with the right to the peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the Convention (see *Perdigão v. Portugal* [GC], no. 24768/06, §§ 57-62, 16 November 2010 where the applicant's compensation for expropriation was fully absorbed by the court fees payable; *Klauz*, cited above, §§ 108-110, and *Cindrić and Bešlić v. Croatia*, no. 72152/13, §§ 91-92, 6 September 2016 which, like *Klauz,* concerned costs order obliging the applicants to pay the costs of the State's representation by the State Attorney's Office).

99. *Ex post* facto refusal to reimburse the applicant's own costs in disputes against the State originating from the acts in the exercise of its public authority may as well constitute a restriction of access to court and/or interference with the right of property. In cases concerning such disputes, in which the applicants had been successful but had nevertheless been left to bear their own costs, the Court found a violation of either Article 1 of Protocol No. 1 (see *Musa Tarhan v. Turkey*, no. 12055/17, §§ 71-89, 23 October 2018) or Article 6 § 1 of the Convention (see *Černius and Rinkevičius v. Lithuania*, nos. 73579/17 and 14620/18, §§ 65-74, 18 February 2020), it being understood that in such cases finding a violation of both Articles is also possible (see paragraph 98 above).

100. In the context of such disputes the Court has, in *Černius and Rinkevičius*, also referred to a more general principle that the risk of any mistake made by the State authority must be borne by the State itself and that errors must not be remedied at the expense of the individuals concerned (ibid, § 71, see also *Beinarovič and Others v. Lithuania*, nos. 70520/10 and 2 others, § 140, 12 June 2018, and *Radchikov v. Russia*, no. 65582/01, § 50, 24 May 2007). It then concluded that the domestic courts' refusal to reimburse the applicants' legal costs incurred during administrative litigation, in which they challenged the imposition of fines by the State Labour Inspectorate and obtained the quashing of the respective decisions as unfounded, constituted a breach of their right of access to court and thus a violation of Article 6 § 1 of the Convention, regardless of the amount of those costs (ibid.,§ 74). The costs however must not be incurred recklessly or without proper justification (see *Stankiewicz v. Poland*, no. 46917/99, § 75, ECHR 2006-VI).

101. The relevant principles emerging from the Court's case-law concerning the right of access to a court are summarised in the case of *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-86, 5 April 2018). In particular, a limitation of the right of access to a court will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if

there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (ibid., § 78).

(b) Application of the above principles to the present case

102. The applicant in the present case had the possibility of bringing legal proceedings. She availed herself of that possibility by bringing an action for judicial review against the Croatian Pension Fund with a view to quashing its decision denying her a disability pension (see paragraph 9 above). The proceedings in question thus concerned a dispute against the State originating from the acts in the exercise of its public authority (see paragraphs 99-100 above). However, even though it ruled in her favour and quashed the contested decision, the Rijeka Administrative Court's nevertheless refused to award her the costs of the judicial review proceedings (see paragraph 19 above).

103. The Court notes that the Rijeka Administrative Court's refusal to award the applicant the costs of the judicial review proceedings stemmed from section 79 of the Administrative Disputes Act, as amended by the 2012 Amendments, which at the relevant time provided that each party to judicial review proceedings had to bear its own costs (see paragraphs 19 and 42-43 above).

104. In the decision of 27 September 2016 the Croatian Constitutional Court invalidated that provision as contrary to the Croatian Constitution (see paragraphs 29 and 48 above). In deciding this, it qualified the rule contained in the impugned provision as a limitation of the right of access to court and established that it had not had a legitimate aim (see paragraph 48 above). Specifically, it held that judicial review proceedings, which are caused by an unlawful decision or action of the State or public authorities, could not be fair unless the State as the losing party paid the costs of the proceedings to the plaintiffs (ibid.).

105. Having regard to its own case-law on the matter (see paragraphs 96-101 above), the Court sees no reason to question the Constitutional Court's finding that the said provision constituted a restriction of the right of access to court.

106. As regards legitimate aim, the Court reiterates that the present case concerns a dispute against the State originating from the acts in the exercise of its public authority (see paragraphs 99-100 and 102 above). In such disputes, for the State to shift the expense of remedying its own errors on the individuals concerned with a view to protecting its own financial interests, is contrary to the well-established principle that the risk of any mistake made by the State authority must be borne by the State itself (see paragraph 100 above). Thus, the Court sees no reason to disagree with the Constitutional Court's finding that the provision in question had not pursued a legitimate aim and that in the event of losing the case in such a situation it

is precisely for the State to bear the costs of the proceedings (see paragraphs 48 and 104 above).

107. The Government expressed doubts as to whether the applicant had actually incurred any costs of legal representation given that her advocate was her son (see paragraphs 2, 10 and 94 above).

108. In this regard, the Court notes that in the later phase of judicial review proceedings the Rijeka Administrative Court awarded the applicant the costs of her legal representation by an advocate in that phase of proceedings. The court did so even though she had been represented by her son, that is, without calling into question whether she had actually incurred those costs (see paragraph 30 above). The same court also awarded her such costs in the concurrent judicial review proceedings against the Croatian Health Insurance Fund in which she was also represented by her son (see paragraph 36 above).

109. The Court further reiterates in this connection that under its case-law developed in the context of Article 41 of the Convention – which it considers equally relevant for the examination of the merits of this complaint – an applicant is considered to have incurred the costs of the proceedings if he or she has paid them or is bound to pay them, pursuant to a legal or contractual obligation (see, for example, *Hajnal v. Serbia*, no. 36937/06, § 154, 19 June 2012).

110. As to the Government's argument that the applicant could have applied to the relevant authorities for legal aid (see paragraph 95 above), the Court notes, having regard to her argument in reply and the relevant legislation (see paragraphs 53-54 and 90 above), that she would not have been eligible. As regards the Government's further argument that she could have asked the Croatian Bar Association to appoint an advocate to represent her *pro bono* (see paragraph 95 above), the Court notes that doing so would not have interrupted the thirty-day statutory time-limit for bringing an action for judicial review (see paragraphs 46 and 54 above). It was therefore unlikely that, even if her request had been processed in time, the time left would have been sufficient for her to establish contact with the advocate and for him or her to prepare the action properly.

111. In view of the foregoing (see paragraphs 96-110 above), the Court finds that there has been a violation of Article 6 § 1 of the Convention in the present case.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

112. 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. Submissions by the parties

1. The applicant

113. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage. She explained that she was worried about how she would find the means to pay the costs of her legal representation which the Rijeka Administrative Court had refused to award her. The injustice of having to bear those costs and the costs of the expert report even though she had won the case had also caused her mental pain and distress.

114. She also claimed 32,265 Croatian kunas (HRK) for the costs and expenses incurred before the domestic courts, and HRK 15,500 for the costs and expenses incurred before the Court.

115. The costs and expenses incurred before the domestic courts corresponded to:

- the costs of her legal representation by an advocate and the costs of the expert report, incurred in the judicial review proceedings complained of, which amounted to HRK 26,015 (see paragraph 18 above), and

- costs of preparation by an advocate of the constitutional complaint against the Rijeka Administrative Court's decision of 21 August 2014 (see paragraphs 9-21 above), which amounted to HRK 6,250.

116. The costs and expenses incurred before the Court consisted of the costs of the applicant's legal representation which amounted to HRK 12,500 and translation expenses which amounted to HRK 3,000.

2. The Government

117. The Government contested these claims. They first noted that the applicant had not submitted a claim in respect of pecuniary damage.

118. As regards the applicant's claim in respect of non-pecuniary damage, the Government considered it excessive and unfounded. They further argued that from the applicant's submissions (see paragraph 113 above) it was not clear what had been the exact cause of the non-pecuniary damage: if she had paid those costs as she claimed (see paragraph 89 above), she would no longer be worried about how she would find the means to pay them. Lastly, as regards this head of damage, the Government submitted that in cases in which the Court had found a violation of the right of access to a court, it had often held that the most appropriate way of redress was to reopen the proceedings complained of – a possibility open to the applicant under section 76 of the Administrative Disputes Act (see paragraph 47 above).

119. As regards the applicant's claim for costs and expenses, the Government first submitted that it was excessive, unsubstantiated and unfounded. In this connection, they first reiterated their doubts as to whether

she had indeed paid those costs given that in those proceedings her advocate had been her son (see paragraphs 2, 10 and 94 above).

120. The Government further noted, as regards the costs and expenses before the domestic courts, that, under the Court's case-law, such costs were only recoverable in so far as they had been incurred in order to seek, through the domestic legal order, prevention or redress of the alleged violation. The applicant sought all the costs allegedly incurred in the period between 10 July 2012 and 9 October 2014 (see paragraph 115 above), that is, the costs of the judicial review proceedings in that period (see paragraphs 9-20 above) and the costs of her constitutional complaint of 9 October 2014 (see paragraph 21 above). However, the fact constitutive of the alleged violation of Article 6 § 1 was precisely the refusal of the Rijeka Administrative Court to award her the costs of those judicial review proceedings (see paragraph 19 and 56 above) allegedly incurred in that period. Because that refusal was the fact constitutive of the violation alleged, those costs could not (at the same time) be considered the costs incurred with a view to remedying that violation.

121. If the Court were not to accept that argument, the Government considered the applicant's claim for the costs incurred in the domestic proceedings excessive because her representative had calculated his fees for bringing the action for judicial review of 10 July 2012 in accordance with the Scale of Advocates' Fees which had entered into force on 19 December 2012 (see paragraphs 9, 11 and 55 above).

122. As regards the costs incurred in the domestic proceedings, the Government argued, as a final point, that if the Court were to award them to the applicant, she would be able to obtain them twice: once from the Court and again in the proceedings following her request for reopening (see paragraphs 47 and 111 above).

123. As regards the costs and expenses incurred before the Court, the Government pointed out that, according to the information available on the website of the Croatian Bar Association, the applicant's representative was fluent in English. They therefore called into question whether the translation expenses sought by her (see paragraph 116 above) had actually been necessary.

B. The Court's assessment

1. General considerations

124. The Court notes that the applicant submitted the invoice of 9 October 2014 concerning the costs of her legal representation incurred before the domestic courts and an invoice of 3 March 2017 concerning the costs of her legal representation incurred before the Court. As regards the Government's doubts as to whether the applicant had actually incurred those costs (see paragraphs 94 and 119 above), the Court refers to its findings on

the merits above (see paragraphs 101-102) and reiterates that a representative's fees are actually incurred if the applicant has paid or is liable to pay them.

125. Likewise, and contrary to the Government's argument (see paragraph 111 above), there is no inconsistency as to the cause of the non-pecuniary damage. For the Court, it is evident that she had paid the costs of the expert report and stated that she would still have to pay the costs of her legal representation (see paragraphs 14-15 and 89 above).

126. On the other hand, the Court finds force in the Government's argument that not all costs claimed as costs of the domestic proceedings can be accepted as such (see paragraph 120 above). Indeed, under the Court's case-law, such costs are only recoverable in so far as they were incurred in order to prevent or redress the breach of the Convention (see, for example, *Dudgeon v. the United Kingdom* (Article 50), 24 February 1983, § 20, Series A no. 59, and *Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom*, no. 11002/05, § 58, 27 February 2007).

127. However, the Court is not bound by the applicant's choice when it comes to deciding under which head a claim or part of a claim is to be considered (see, for example, *Dinu v. Romania*, no. 64356/14, §§ 88-90, 7 February 2017).

128. Therefore, in so far as the applicant's claim for the costs and expenses incurred before the domestic courts concerns the costs incurred in the judicial review proceedings complained of (see paragraphs 18 and 115 above), the Court will examine it as a claim for pecuniary damage. That is so because the refusal of the Rijeka Administrative Court to award her those costs constitutes a violation found by the Court in the present case (see paragraphs 56 and 99-111 above). For the purposes of Article 41 of the Convention those costs are thus pecuniary damage sustained by that violation and cannot be considered costs within the meaning of that Article, namely the costs incurred in order to prevent or redress that violation (see paragraph 126 above).

129. The remainder of her claim, namely the costs of the constitutional complaint of 9 October 2014 (see paragraphs 21 and 115 above), will be considered a claim for the costs and expenses incurred before the domestic courts, as they were indeed incurred in order to redress the violation in question (see paragraph 126 above).

2. Damage

130. The Court has found that the Rijeka Administrative Court's refusal in its judgment of 21 August 2014 to award the costs of the proceedings to the applicant was in breach of Article 6 § 1 of the Convention (see paragraphs 99-104). Therefore, there is a sufficient causal link between the applicant's claim for the costs of the judicial review proceedings in the

period leading up to that judgment (see paragraph 128 above) and the violation found.

131. The Government argued that those costs were excessive in that the applicant's representative had calculated his fee for bringing the action for judicial review of 10 July 2012 in accordance with the Scale of Advocates' Fees which had entered into force on 19 December 2012 (see paragraphs 9, 11, 55 and 121 above). The Court however notes that under that scale an advocate has to apply the scale in force at the time of charging the fees, and that the relevant invoice was issued by the applicant's representative on 9 October 2014 (see paragraphs 55 and 89 above). Moreover, that Scale also provides that the courts must apply the scale in force at the time the decision on costs is issued (see paragraph 55 above). In the present case, the Rijeka Administrative Court issued a decision on costs on 21 August 2014, that is, after that scale had come into force (see paragraphs 11, 19 and 55 above). The Court therefore cannot accept the Government's argument that the claim was excessive.

132. In view of the above (see paragraphs 130-131), the Court accepts the applicant's claim in respect of pecuniary damage (see paragraph 128 above) and awards her EUR 3,500 under that head of damage, plus any tax that may be chargeable to her on that amount.

133. The Court also finds that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 3,000 under that head, plus any tax that may be chargeable.

3. Costs and expenses

134. As regards the applicant's claim for costs and expenses (see paragraphs 114-116 and 129 above), the Court reiterates that, according to its 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 are reasonable as to quantum.

135. In this connection, the Court notes that, pursuant to Rule 36 § 5 of the Rules of Court, an advocate or other approved representative must have an adequate understanding of one of the Court's official languages and sufficient proficiency to express himself or herself in those languages. The Court therefore accepts the Government's argument (see paragraph 123 above) that the translation expenses were not necessary, as the applicant's representative seems to have a sufficient command of English.

136. Regard being had to the documents in its possession and the above criteria (see paragraph 134 above), the Court considers it reasonable to award the sum of EUR 840 for the costs of the domestic proceedings (see paragraphs 115 and 129 above) and EUR 1,683 for the proceedings before the Court (see paragraph 116 above), plus any tax that may be chargeable to the applicant.

4. Default interest

137. 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 application admissible;

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, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Croatian kunas at the rate applicable at the date of settlement:
      (i) EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of pecuniary damage;
      (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 2,523 (two thousand five hundred and twenty-three euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 22 April 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Registrar

Krzysztof Wojtyczek
President