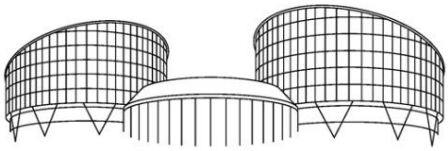

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

BIG ROOM

ZUBAC CASE v. CROATIA

(Application no . 40160/12)

STOP

STRASBOURG

April 5, 2018

This judgment is final. It may undergo shape adjustments.

In the case of Zubac v. Croatia,

The European Court of Human Rights, sitting as a Grand Room composed of:

Guido Raimondi, *president,*
Angelika Nussberger,
Linos-Alexandre Sicilianos,
Ganna Yudkivska,
Helena Jäderblom,
Luis López Guerra,
André Potocki,
Aleš Pejchal,
Faris Vehaboviÿ,
Ksenija Turkoviÿ,
Siofra O'Leary,
Alena Poláÿková,
Georgios Serghides,
Tim Eicke,
Jovan Ilievski,
Jolien Schukking,
Péter Paczolay, *judges,*

and Søren Prebensen, *Deputy Registrar of the Grand Chamber,*

After having deliberated in private on July 12, 2017 and January 31, 2018,

Renders the following judgment, adopted on the latter date:

PROCEDURE

1. The case originated in an application (no. 40160/12) against the Republic of Croatia lodged with the Court by a national of Bosnia and Herzegovina, Ms Vesna Zubac (“the applicant”) on May 30, 2012 under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”).

2. The applicant, who was granted legal aid, was represented by Mr I. Ban, lawyer in Dubrovnik. The Croatian Government (“the Government”) was represented by its Agent, Ms Š. Stažnik.

3. The applicant alleged in particular that she had not had access to the Supreme Court. She saw this as a violation of Article 6 § 1 of the Convention.

4. The application was first assigned to the First Section of the Court (Article 52 § 1 of the Rules of Court – “the Rules”). On March 27, 2015, the president of this section decided to communicate the above-mentioned grievance to the Government and the application was declared inadmissible for

the surplus in accordance with article 54 § 3 of the regulations. On September 1 , 2015, the Court modified the composition of its sections (Article 25 § 4 of the Rules). The present application was then allocated to the second section thus reworked (article 52 § 1). On September 6, 2016, a chamber of this section composed of Iÿÿl Karakaÿ, Julia Laffranque, Paul Lemmens, Valeriu Griÿco, Ksenija Turkoviÿ, Jon Fridrik Kjølbro and Georges Ravarani, judges, as well as Stanley Naismith, section registrar, delivered its judgment in which it declared, unanimously, the complaint relating to the right of access to a court guaranteed by Article 6 § 1 admissible and the other complaints relating to the unfairness of the procedure inadmissible and concluded, by the majority, to the violation of Article 6 § 1 of the Convention. The judgment was accompanied by the dissenting opinion of Judges Lemmens, Griÿco and Ravarani.

5. On 11 January 2017, the Government requested the referral of the case to the Grand Chamber under Article 43 of the Convention. On March 6, 2017, the panel of the Grand Chamber granted this request.

6. The composition of the Grand Chamber was decided in accordance with Articles 26 §§ 4 and 5 of the Convention and 24 of the Rules of Procedure. During the final deliberations, Alena Poláÿková, substitute judge, replaced Nona Tsotsoria, who was unable to attend (article 24 § 3 of the rules).

7. Both the applicant and the Government filed written observations on the merits of the case (Rule 59 § 1). The Government of Bosnia and Herzegovina was informed that it could intervene in the present case (Articles 36 § 1 of the Convention and 44 §§ 1 and 4 of the Regulations), but it did not make use of this right.

8. A hearing took place in public at the Human Rights Palace man, in Strasbourg, July 12, 2017 (article 59 § 3 of the regulations).

Appeared:

– for the Government

Ms. Š. STAŽNIK, representative of the Republic of Croatia before the European Court of Human Rights, N. KATIÿ, *agent,*
representation of the Republic of Croatia before the European Court of Human Rights,
Mr. KONFORTA, representation of the Republic of Croatia before the European Court of Human Rights
the man, *advisors ;*

– for the applicant

Me I. BAN, lawyer, *advice.*

The applicant was also present. The Court heard Mr Ban, the applicant and Ms Stažnik in their statements, as well as Mr Ban and Ms Stažnik, Ms Katiÿ and Ms Konforta in their responses to questions put by judges.

ACTUALLY

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1959 and lives in Bijela (Montenegro).

10. On 29 September 1992, the applicant's father-in-law, Vu.Z., represented by his wife, KZ, concluded a contract with FO and HA providing for the exchange of his house located in Dubrovnik for another located in Trebinje (Bosnia and Herzegovina).

11. Vu.Z. died on an unknown date in 2001 or 2002.

12. On 14 August 2002, MZ, husband of the applicant and son of Vu.Z., represented by a certain M.ÿ. of Herceg Novi (Montenegro), brought against HA and the heirs of FO, before the Dubrovnik Municipal Court *(Opÿinski sud u Dubrovniku* – the Municipal Court), a civil action for the purpose of annulling the contract for the exchange of houses and to obtain possession of the house located in Dubrovnik. M.ÿ. was a lawyer practicing in Montenegro.

13. MZ alleged that the contract contained incorrect information regarding the legal situation of the house in Trebinje and that KZ had not received the required authorization to sign it. Citing the war situation in Croatia, he maintained that the contract had been signed under duress. He also claimed that the difference between the values of the goods exchanged was disproportionate: the house in Dubrovnik would have been worth around 250,000–300,000 euros (EUR) while the value of the house in Trebinje would have been around 80,000–90 000 EUR. Finally, he emphasized that it had been impossible for him to regularize his title to the house located in Trebinje due to defects in the contract.

14. In the document instituting proceedings, MZ indicated that the value of the subject matter of the dispute *(vrijednost predmeta spora)* was 10,000 Croatian kunas (HRK) (approximately EUR 1,300 at the time).

15. On 16 August 2002 the Municipal Court invited MZ to provide details of his legal representation, in particular to produce a valid power of attorney and to provide other documents relating to his application.

16. A first hearing took place on March 3, 2003, during which the municipal court ordered MZ to produce documents attesting to his capacity to act as heir of Vu.Z.

17. After the hearing, the parties exchanged the briefs and documentary evidence requested by the municipal court.

18. At the hearing which took place on 13 December 2004, the defendants insisted that the question of the representation of MZ by Mr.ÿ. was resolved. The latter announced that he was no longer representing MZ and that he would appoint a lawyer practicing in Croatia to represent him.

19. Another hearing took place on 1 February 2005. MZ was represented there by IB, a lawyer in Dubrovnik (who also represents the applicant before the

Court for the purposes of this case). During the hearing, Me IB corrected some clerical errors in the document initiating the proceedings and reiterated the arguments contained therein to request the annulment of the contract, namely that it had been signed under duress, that the legal situation of the house in Trebinje and the title to it had not been correctly described and that the difference in property values was disproportionate. In response to a question from the judge regarding the validity of the power of attorney given by Vu.Z. to his wife, KZ (paragraphs 10 and 13 above), Mr IB emphasized that he did not think that the power of attorney was invalid since the original had been deposited in the appropriate register. Claiming that there was no reason to cancel the contract, the defendants disputed the arguments put forward on behalf of MZ

20. During the hearing held on 6 April 2005, Mr IB announced that at the end of it he would cease to represent MZ, who would then be represented by the applicant (MZ's wife). During the same hearing, Me IB produced two documents. In the first, he requested that the validity of the power of attorney given by Vu.Z. to his wife, KZ (paragraphs 10, 13 and 19 above), was examined on the grounds that its authenticity raised doubts.

In the same document, he requested that a provisional measure (in the form of an injunction) prohibiting any disposition of the property in question be taken. In the second document, he explained that the amount of the subject of the dispute had been undervalued and that it should be increased to 105,000 HRK (which was then equivalent to approximately 14,160 EUR).

21. At the same hearing, emphasizing that on February 1 , 2005 Mr. IB had not contested the validity of the power of attorney, the defendants maintained that no question arose in this regard. The defendants also opposed the request for an injunction. Finally, they objected to the increase in the value of the subject matter of the dispute, arguing that the sole purpose of this modification was to give the plaintiff the possibility of filing an appeal.

22. After hearing the arguments of the parties, the municipal court examined the defendants as witnesses. Then, at MZ's request, he adjourned the hearing pending production of the original of the contested power of attorney and reserved his decision on the application for an injunction.
No decision was made regarding the modification of the value of the subject of the dispute.

23. On 25 April 2005, the Municipal Court ordered MZ to pay HRK 1,400 (which then corresponded to approximately EUR 190) as the costs of registering his civil claim. He calculated these costs based on the amount of HRK 105,000 indicated for the value of the dispute.

24. During the hearing held on September 13, 2005, the court
municipal examined the documents in the file, then adjourned the hearing.

25. On September 27, 2005, the municipal court rendered its judgment rejecting the civil request and the request for an injunction filed by MZ. It noted that, despite several summonses addressed to MZ, he had not appeared, without advancing any valid reason. Furthermore, he considered that, having regard to the arguments formulated by the parties, in particular those concerning the questions relating to the power of attorney used for the conclusion of the contract, there was no reason to doubt the validity of the contract. The court ordered MZ to bear all costs and expenses, including those incurred by the opposing parties, namely HRK 25,931.10 (approximately EUR 3,480 at the time). He calculated the amount of costs based on the value of the subject matter of the dispute which had been indicated at the hearing on April 6, 2005, namely HRK 105,000. The relevant part of the judgment reads as follows:

> "(...) [T]he reimbursement of legal costs was granted to the defendants [and the amount of these costs was assessed] based on (...) the value of the dispute that the plaintiff indicated (105 000 HRK – (page 58 [of the file]) and which this court accepted."

26. On 12 December 2005, the court of first instance ordered MZ to pay HRK 1,400 in respect of the judgment. He set this amount based again on the value of the dispute, which amounted to HRK 105,000.

27. On 1 October 2009, the Dubrovnik County Court *(Županijski sud u Dubrovniku)* rejected MZ's appeal and upheld the first instance judgment. The relevant passage from the appeal judgment states:

> "Given that [the judgment of first instance] is appealed as a whole, therefore in that it includes the decision relating to legal costs, and although the appeal does not include details on this point, [there is it should be noted that] this decision is based on the applicable law and [that] appropriate reasons have been provided. »

28. On 24 May 2010, MZ filed an appeal *(revizija)* before the Court Supreme Court, challenging the findings of the lower courts.

29. On October 7, 2010, MZ died. The proceedings were continued by his wife, Vesna Zubac, as heir (she is also the applicant in this case).

30. On 30 March 2011, the Supreme Court declared the appeal inadmissible on the grounds that it presented a claim for an amount lower than that of HRK 100,000 (approximately EUR 13,500 at the time) which determined the jurisdiction's rate. It considered that the value which had to be taken into account for the subject matter of the dispute was that which MZ had indicated in his request made in the document initiating the proceedings. The relevant part of the Supreme Court judgment reads as follows:

> "According to Article 40 § 3 of the Civil Procedure Act, if, in the situation described in paragraph 2 [of the same article], it is obvious that the value of the subject of the dispute indicated by the plaintiff is too high or too weak, such that a question arises as to jurisdiction with regard to the subject matter of the dispute, as to the composition of

the court, as to the nature of the procedure, as to the right to appeal, as to the authorization to represent a party or as to the legal costs, the court, ex officio or upon objection of the defendant, verifies quickly and appropriately the accuracy of the value indicated and, by a decision which is not subject to a separate appeal, fixes the value of the subject of the dispute, at the latest during the preparatory hearing or, in absence of such a hearing, during the first session of the main hearing, before the defendant has started to present his arguments on the merits.

It follows that, when the action does not concern a sum of money, the plaintiff must indicate the value of the subject of the civil dispute in the document initiating the proceedings and that, once he has done, he is not authorized to modify it. At the latest during the preparatory hearing or, in the absence of such a hearing, during the main hearing in the context of an examination taking place before that on the merits, only a court can set the value of the subject of the dispute, ex officio or in the event of an objection raised by the defendant, if it finds that the value indicated in the civil claim is too high or too low.

In this case, the value of the subject matter of the dispute which was indicated in the initial application was 10,000 Croatian kunas.

Subsequently, at the hearing held on April 6, 2005, considering that the value of the subject of the dispute which was indicated in the civil claim was too low, the plaintiff's representative increased it to 105,000 Croatian kunas (...) The applicant, however, did not modify his request at the same time. The court of first instance did not make a decision fixing a new value of the dispute, because the procedural conditions set out in Article 40 § 3 of the Civil Procedure Act were not met.

It follows that the value of the subject matter of the dispute to be taken into account is that which was indicated in the initial request, namely 10,000 Croatian kunas, because the applicant was only authorized to modify the value initially indicated if he modified his request at the same time. »

31. Complaining in particular about having been deprived of access to the Supreme Court, the applicant appealed to the Constitutional Court, which, on November 10, 2011, summarily declared it inadmissible, considering that the case did not raise any questions of constitutionality. On November 30, 2011, it notified the applicant's representative of its judgment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant domestic law

1. The Constitution

32. Relevant provisions of the Constitution of the Republic of Croatia *(Ustav Republike Hrvatske,* Official Gazette nos. 56/1990, 135/1997, 8/1998 (consolidated text), 113/2000, 124/2000 (consolidated text), 28 /2001 and 41/2001 (consolidated text), 55/2001 (rectification), 76/2010, 85/2010 and 5/2014) are worded as follows:

Article 29

"Everyone has the right to have their case heard fairly and within a reasonable time, by an independent and impartial court, established by law, which will decide (...) disputes over their rights and obligations of a civil nature. »

Article 119

"1) The Supreme Court of the Republic of Croatia, as the highest court, ensures consistent application of the law and equality of all before the law.

(...) »

2. The Civil Procedure Law

33. Relevant provisions of the Civil Procedure Act *(Zakon o parniÿnom postupku,* Official Gazette Nos. 53/1991, 91/1992, 112/1999, 81/2001, 117/2003, 88/2005, 84/2008, 96 /2008 and 123/2008), in force at the material time, read as follows:

Fixing the value of the subject of the dispute
Article 35

"1) When the value of the subject matter of the dispute *(vrijednost predmeta spora)* is taken into account for the determination of jurisdiction, the composition of the court or the right to appeal, and in the other cases provided for by the this law, only the value of the main claim is considered to be the value of the subject of the dispute.

(...) »

Article 40

« (...)

2) (...) when the action does not concern a sum of money, the value to be taken into account is that of the subject of the dispute *(vrijednost predmeta spora)* which the plaintiff indicated in the civil application *(u tužbi).*

3) If, in the situation described in paragraph 2, it is evident that the value of the subject matter of the dispute indicated by the plaintiff is too high or too low, such that a question arises as to the jurisdiction of the plaintiff. With regard to the subject matter of the dispute, as to the composition of the court, as to the nature of the procedure, as to the right to appeal, as to the authorization to represent a party or as to legal costs, the jurisdiction, ex officio or upon objection of the defendant, verifies quickly and appropriately the accuracy of the value indicated and, by a decision which is not subject to a separate appeal, fixes the value of the subject of the dispute , at the latest during the preparatory hearing or, in the absence of such a hearing, during the first session of the main hearing, before the defendant has started to present his arguments on the merits.

(...) »

Representation
Article 89

“(1) The parties may perform procedural acts personally or through their representatives. The court may, however, invite a represented party to speak in person about facts to be established for the purposes of the procedure.

2) A represented party may always appear in person before a jurisdiction and make declarations alongside his representative. »

Article 89a

“(1) Unless the law provides otherwise, only a lawyer may represent a party.

2) A party may be represented by a person with whom it has an employment relationship if the latter enjoys full legal capacity.

(3) A party may be represented by a parent [descendant or ascendant], a brother, a sister or a spouse if this representative enjoys full legal capacity and does not practice the profession of lawyer without authorization. »

Article 90

"(1) If a person appears as a representative although he cannot appear in this capacity according to the provisions of Article 89a of this Law, the court prohibits him from acting as a representative and he informs the party concerned.

(...)

3) If it is established that a representative who is not a lawyer is not capable of performing his duties, the court shall warn the party concerned of the consequences which may result from inadequate representation. »

Content of a civil request
Article 186

“(1) A civil application must contain a specific request, consisting of the main request and the incidental requests, the facts on which the applicant bases his claims, the evidence supporting the facts and the other information which must be included in any document addressed to the court (article 106).

2) If the jurisdiction, the composition of the court, the nature of the proceedings, the right to appeal, the authorization to represent a party or the right to payment of legal costs depend on the value of the subject matter of the dispute and if the subject of the claim is not a sum of money, the plaintiff indicates in the civil request the value of the subject of the dispute (...) »

Modification of a civil application *(preinaka tužbe)*
Article 190

“(1) The plaintiff may amend his civil claim until the conclusion of the main hearing.

2) Once the civil demand has been served on the defendant, it cannot be amended without the defendant's consent. However, even if the defendant raises a

objection, the court may authorize a modification if it considers it useful for the definitive resolution of the dispute between the parties.

(3) The defendant shall be deemed to have consented to the amendment of the civil claim if, without having previously raised any objection to the amendment, he begins to present his arguments on the basis of the amended civil claim (...)"

Article 191

"1) The modification of a civil request consists of changing its nature, increasing its amount or adding another request.

(...)

3) The civil claim is not amended if the claimant changes its legal basis, reduces its amount, or, without affecting this claim, modifies or corrects certain statements. »

Main audience
Article 297

"(6) Where this Law provides that a party may (...) perform a procedural act before the defendant has begun to present his arguments on the merits at the main hearing, such (...) The act may be performed until the defendant has finished presenting his arguments in response to the request. »

Appeal
Article 382

"1) The parties may appeal against a decision rendered in second instance:

1. if the value of the dispute as reflected in the contested part of the decision is more than HRK 100,000 (...)

(2) If a party is not entitled to appeal under paragraph 1 of this Article, it may file an [extraordinary] appeal against a decision rendered in second instance if the decision which will resolve the dispute depends on the resolution of 'a question of substance or procedure which is important to ensure a coherent application of the law and the equality of citizens (...)'

Article 385

"1) The decision rendered in second instance, referred to in paragraph 1 of Article 382 of this Law, may be appealed on the following grounds:

1. a fundamental error was committed during the proceedings [before the court of first instance] (...)

2. a fundamental error was committed during the proceedings before the court of second instance;

3. errors were made in the application of the relevant substantive law.

(...) »

Article 392

"The [Supreme Court] rejects an appeal [which is inadmissible] (...)"

Article 393

"The [Supreme Court] rejects an appeal by a judgment if it considers that the grounds put forward in support of the appeal are unfounded. »

Article 394

"1) If it finds procedural defects [justifying it] (...) the [Supreme Court] issues a judgment annulling entirely or partially the decisions rendered in first and second instance, or only the decision rendered in second instance, and she sends the case back for a new examination (...)"

Article 395

"1) If the [Supreme Court] considers that the substantive law has not been correctly applied, it allows the appeal and modifies the contested decision (...)"

3. The law on registration fees

34. The relevant provisions of the Law on Registration Fees *(Zakon o sudskim pristojbama,* Official Gazette Nos. 74/1995, 57/1996, 137/2002 and 26/2003 – consolidated version) read as follows:

Article 14

"1) A court exempts from registration fees a party who, having regard to his general financial situation, cannot pay them without damaging consequences on his maintenance and that of his family.

(...)

3) In rendering its decision, the court shall take into account all the circumstances, in particular the value of the subject of the dispute, the number of persons supported by the party and the income of the party and his family. »

Fixing the value [of the subject matter of the dispute] for the purposes of calculating registration fees

Civil disputes
Article 25

"1) The value of the subject of a dispute concerning property rights to property real estate is fixed according to the market value of the property in question (...) »

Recovery of unpaid fees
Article 38

"(1) Within three days from the date on which he became aware of the notice, order or warning relating to the payment of costs, or the date on which the notice, the order or warning in question has been served on him, the party concerned may raise before the court of first instance an objection to this notice, order or warning (...) »

Reimbursement of expenses
Article 43

"(1) A person who has paid costs which he had no obligation to pay, or who has paid an amount in excess of the sum required, as well as a person who has paid costs for a judicial act shall not having never been adopted or executed, is entitled to reimbursement of the costs concerned (...)"

Article 44

"(1) An application for reimbursement of costs must be submitted to the court of first instance within 90 days from the date on which the costs were wrongly paid (...)

2) Reimbursement of fees can no longer be requested after the expiration of a period of one year from the date of their payment. »

B. Relevant internal practice

1. The Supreme Court

a) Case law relating to the fixing/modification of the value of the object of the dispute

35. In its decision no. Rev-2836/1990 rendered on January 27, 1991, the Supreme Court ruled as follows:

"The ground of appeal according to which the real estate has a higher value than that indicated in the civil application and that the decisions of the lower courts are therefore illegal cannot be accepted, because, even assuming that [this] argument relating to the value of the immovable property is correct, it is irrelevant at this stage of the procedure.

Indeed, the value of the subject of the dispute was indicated by the plaintiff himself (as is his right) and it is this value which is taken into account (article 40 § 2 of the law on Civil Procedure).

The court accepted without verification the indicated value of the subject of the dispute (but it was authorized to [verify this value] up to a certain stage of the procedure – during the preparatory hearing, or during the hearing principal before the defendant began to present its arguments on the merits) and the defendant did not contest this value in its response to the civil request. Furthermore, the defendant began to present its arguments on the merits at the preparatory hearing. Therefore, at the end of the preparatory hearing, the value of the subject of the dispute could no longer be fixed by the parties or the court.

(...)

Furthermore, [the lower court] was right to consider that the indicated value of the subject matter of the dispute does not necessarily have to correspond to the value of the disputed property.

(...) »

36. The relevant passage from decision no. Rev-62/1994-2 rendered on February 23, 1994 reads as follows:

> “During the proceedings, the civil action was extended to new defendants. However, as the claim remained the same in relation to all defendants, this extension was not sufficient to provide the plaintiffs with legal authority to change the value of the subject matter of the dispute. Indeed, the defendants, within the meaning of article 196 §§ 2 and 3 of the law on civil procedure, to whom the civil action now extends with their consent, must find the dispute in the state in which it was the moment they became parties. Moreover, since the plaintiffs were not permitted to change the value of the subject matter of the dispute, on the grounds that the claims had not been objectively modified (further given that when the defendants became parties at the dispute, the value of the object of the dispute was still 30,000 dinars [currency previously used in Croatia]), the value in question remains in this case the only one which is taken into account for the purposes of the assessment of the admissibility of the appeal.
>
> (...) [I]n the present case, an appeal would be admissible if the fixed value of the subject of the dispute exceeded the sum of 50,000 old dinars (HRD). However, this value having been set at 30,000 HRD, it implies the inadmissibility of the appeal, regardless of the question of the distribution of the request between all the parties. »

37. In its decision no. Rev-538/03 rendered on March 4, 2004, the Court Supreme considered the following:

> “The clarifications made to the request and the extension thereof to a new defendant (...) do not constitute an objective modification of the civil request within the meaning of Article 191 of the Civil Procedure Act. The admissibility of the appeal is therefore assessed in relation to the value of the subject of the dispute indicated in the [initial] civil request (...)”

38. The relevant passage from decision no. Rev-20/06-2 rendered on April 11, 2006 is worded as follows:

> “Pursuant to Article 40 § 2 of the Civil Procedure Act, the plaintiff set the value of the subject matter of the dispute at HRK 10,000. Therefore, despite the objection raised by the defendants in this regard, the court of first instance did not render a [separate] decision to determine itself, under Article 40 § 3 of the same law, the value of the subject of the dispute.
>
> However, in its observations of April 23, 2001 (...), the plaintiff set the value of the subject of the dispute at 30,000 HRK. However, since she did not amend the civil application at the same time, she was not entitled to subsequently change the amount of value that had been stated in the initial application.
>
> It must therefore be considered that in this case the value of the subject matter of the dispute amounts to HRK 10,000. »

39. In its decision no. Rev-694/07-2 rendered on September 19, 2007, the Supreme Court ruled as follows:

> “According to Article 40 § 3 [of the Civil Procedure Act], which was in force when the civil action was brought on October 1 , 1996 and when the first instance judgment was rendered on June 5, 2001, and which should therefore apply, the value of the subject of the dispute, when the request did not relate to a sum of money, could be verified and modified by the court only during the preparatory hearing or, in the absence of such a hearing, during the main hearing before the start of the examination on the merits.

Contrary to what has been argued, in the present case, the plaintiff set in her observations of August 21, 2000 the new value of the subject of the dispute at 100,000 HRK, which she was not authorized to do. Even the court issued a separate decision on March 2, 2007 (...) setting the new value of the subject of the dispute at HRK 100,000.

Given that, taking into account the above, the value of the subject of the dispute was linked to [the value initially set at] HRK 1,000, the subsequent actions of the plaintiff and the judge regarding the modification of this value do not have no legal effect on the procedure. »

40. The relevant passage from decision no. Rev-798/07-2 rendered on February 5, 2008 reads as follows:

"The Zagreb City Court disregarded Article 40 § 3 of the Civil Procedure Act when, at the main hearing on February 21, 2003, it set the value of the subject of the dispute at HRK 150,000. According to the provision in question, the court, ex officio or upon objection of the defendant, assesses quickly and in the most appropriate manner the accuracy of the value which has been fixed and, by a decision which is not likely to a separate appeal, sets the value of the subject matter of the dispute, at the latest during the preparatory hearing or, in the absence of such a hearing, during the first session of the main hearing, before the defendant has not begun to present its arguments on the merits.

Therefore, after the preparatory hearing in the present case was held, the trial court no longer had the authority to fix the value of the subject matter of the dispute. It must therefore be considered that in the present case this value is [that initially set at] HRK 2,900.

Since the value of the subject matter of the dispute does not exceed HRK 100,000, the appeal is inadmissible (...) »

41. The relevant passage from judgment no. Rev-320/2010-2 delivered on September 8, 2011 reads as follows:

"[T]he court of first instance did not set the value of the subject matter of the dispute following an objection raised by the defendant during the first session of the main hearing before the latter has begun to present its arguments on the merits (...). Consequently, he did not take a decision within the meaning of Article 40 § 3 of the Civil Procedure Act and it must be considered that the value of the subject matter of the dispute was established by the civil request filed by the plaintiff, which set it at HRK 101,000, regardless of the fact that the court of first instance set it after the conclusion of the trial following an objection raised by the defendant.

According to Article 40 § 3 of the Civil Procedure Act, the court may, ex officio or upon objection from the opposing party, if it doubts the accuracy of the value of the subject of the dispute which has been fixed, verify and fix this value, but he can only do so during the preparatory hearing or, in the absence of such a hearing, during the first session of the main hearing, before the defendant began to present its arguments on the merits. It follows that once this stage of the procedure has passed, neither the court nor the plaintiff can modify the value of the subject of the dispute established in the civil request and it must therefore be considered that this value has been established (...) »

42. In its decision no. Rev-648/10-2 rendered on January 23, 2013, the Court Supreme considered the following:

> "The court did not rule on the objection raised by the defendant [regarding the value of the subject of the dispute which was established in the civil claim] and the latter did not file an appeal on this point against the first instance judgment. Accordingly, according to the application for the issuance of a title deed, the value of the subject of the dispute amounts to HRK 10,000, namely the value set by the applicant in his civil application. »

43. The approach of the Supreme Court just described has been followed in other cases, notably Rev-2323/90 (January 24, 1991), Rev-538/03 (March 4, 2004), Gzz-140 /03 (April 21, 2004), Revr-507/03 (June 2, 2004), Revt-72/07 (July 4, 2007), Rev-1525/09-2 (June 8, 2011), Rev-287/11-2 (December 14, 2011), Rev-X-848/14 (February 24, 2015) and Rev-x-916/10 (April 8, 2015).

b) Case law relating to the modification of a civil claim

44. The relevant passage from decision No. Rev-2015/94 rendered on July 4, 1996 reads as follows:

> "The appellant rightly maintains that the court of first instance fundamentally disregarded the rules of civil procedure (...) when, after the appellant had increased the amount of the claim at the hearing of March 23, 1993 at which the defendant was not present, he closed the proceedings instead of postponing the hearing and sending the minutes to the defendant.
>
> The increase in the amount of the claim, in the sense that such an increase is provided for in Article 191 § 1 of the Civil Procedure Act, constitutes an amendment to the civil claim and, in the event of such a change at the hearing , Article 190 § 7 of the same law required the court [to proceed as described above].
>
> By failing to do so, [the court] committed [a fundamental violation of the rules of procedure], because such unlawful conduct prevented the defendant from presenting his arguments to the court. »

45. In its decision no. Rev-x-1134/13 rendered on March 3, 2015, the Supreme Court expressed itself as follows:

> "By "facts" we mean everything that really [happened] in the past or recently (events, activities, conditions, situations, opinions, declarations of will, positions, etc.), on the basis of which the applicant has established the factual basis of his request, while the legal basis [of it] consists of the legal qualification of the disputed links, as well as the rules of law justifying the request for adoption by the court of law. a particular decision.
>
> Unless the situation falls under Article 7 § 2 of the Civil Procedure Act (...), the court is bound by the facts presented to it by the parties. He is not authorized to establish facts that the parties have not alleged, as long as he can base his decision only on the factual basis invoked by the parties during the procedure. (...)
> By presenting the facts and formulating his request, the plaintiff defines the subject of the dispute; it follows that the content of the court's decision is determined by the nature of the legal basis and by the applicable legal norm. The court rules within the limits of the request made during the procedure (...) and exceeds these limits if it bases its decision on a factual basis different from that invoked by the applicant. Furthermore, the factual basis of the claim plays an important role for the definition of the dispute and, in this regard, for the application of the rules relating to the

amendment of a civil application (Article 191 of the Civil Procedure Act).
On the other hand, the plaintiff is not obliged to indicate the legal basis of his request and, if he does so, the court is not bound by this indication. In itself, [the indication of the legal basis] is not relevant for the definition of the subject-matter of the dispute (...) nor, in this respect, for the application of the rules relating to the modification of a civil request.

Regarding the objective modification of a request, the Supreme Court considers that within the meaning of Article 191 of the Civil Procedure Act (...) there is also a modification when a request formulated in a general manner is based on a factual basis with relevant differences (a different set of facts) from the previous basis of the application, even if the application has not been formally amended, or where [specific elements] have been added, modified or subtracted from the [existing] elements of the factual basis in such a way that the new set of facts leads to [the conclusion that] the nature of the request has changed.

In the present case, until amended, the plaintiff based his claim for payment of a sum of money solely on the fact that payments due under a lease had not been made (contract execution problem). During the proceedings, he changed the factual basis of his claim for the [relevant] period, seeking compensation for loss of earnings ever since. Contrary to what the court of second instance considered, this was not a change of legal basis, nor a [clarification] of the request within the meaning of article 191 § 3 of the law on civil procedure, nor new elements of evidence, but a new set of facts objectively leading to a change in the nature of the request.

In particular, it was not a change of legal basis, because it was not only a question of a modification, or the formulation of new arguments, concerning the legal qualification of the request, but of the presentation of a new factual basis founding liability for the damage caused, on which (...) the plaintiff supported his request. The possibly [different] legal qualification simply served to underline the more precise distinction between the new factual basis [and the previous one]. It was not [a clarification] of the previous arguments, because it was not a correction, clarification, or addition affecting the previous factual basis, but it was a different set of facts constituting a new factual basis for the request seeking that the court render a decision devoid of connection with the previous factual basis. Nor was it new evidence, since the [new] arguments constituted in themselves a concrete factual basis on which a judicial decision could be based (...)"

2. The Constitutional Court

46. In case No. U-III-1041/2007, the Constitutional Court examined a judgment of the Supreme Court (No. Rev-706/06) which declared an appeal inadmissible on the grounds that the lower courts had wrongly followed the rules of ordinary civil procedure, according to which the jurisdictional rate applicable to an appeal was 100,000 HRK, whereas, according to the Supreme Court, they should have treated the case as a commercial dispute, for which this rate was 500 000 HRK, a threshold which had not been reached in the case in question.

47. In a decision rendered on June 24, 2008, the Constitutional Court considered that this judgment of the Supreme Court disregarded the right to a

fair trial guaranteed by article 29 § 1 of the Constitution. It therefore overturned the judgment and referred the case to the Supreme Court. The relevant passage from the Constitutional Court's decision reads as follows:

> “It is inadmissible (...) that the appeal was declared inadmissible on the grounds that the value of the contested part of the final decision did not exceed HRK 500,000, while as a whole the proceedings before the lower courts were carried out according to the rules of ordinary civil procedure. What is more, the admissibility of the appeal was assessed on the basis of the rules applicable [to commercial disputes] although in reality the procedure was not conducted in accordance with them.
>
> (...)
>
> When ruling on the appeal, particularly when applying the conditions for lodging such an appeal, the Supreme Court adopted a legal position contrary to that which the appellant could reasonably have expected. in view of the proceedings conducted before the lower courts. The Constitutional Court therefore considers that the Supreme Court disregarded the procedural rules relating to the admissibility of an appeal, to the detriment of the applicant, thus violating the latter's right to a fair trial guaranteed by Article 29 § 1 of the Constitution. »

III. INTERNATIONAL LAW

A. The International Covenant on Civil and Political Rights

48. Article 14 of the International Covenant on Civil and Political Rights (16 December 1966, United Nations Treaty Series, vol. 999, p. 171) states:

> “1. All are equal before the tribunals and courts of justice. Everyone has the right to have their case heard fairly and publicly by a competent, independent and impartial tribunal, established by law, which will decide (...) disputes over their civil rights and obligations.
>
> (...) »

B. The American Convention on Human Rights

49. The relevant provisions of the American Convention relating on human rights (November 22, 1969) are worded as follows:

Article 8. Judicial guarantees

> “1. Everyone has the right to have their case heard with the necessary guarantees, within a reasonable time, by a competent, independent and impartial judge or tribunal, previously established by law, which (...) will determine their rights and obligations in civil matters as well as in the areas of labor, taxation, or in any other area.
>
> (...) »

Article 25. Judicial protection

"1. Everyone has the right to a simple and rapid remedy, or any other effective remedy before the competent judges and courts, intended to protect them against any acts violating their fundamental rights recognized by the Constitution, by law or hereby Convention, even though these violations were committed by persons acting in the exercise of official functions.

(...) »

C. The African Charter on Human and Peoples' Rights

50. The relevant provision of the African Charter on Human and Peoples' Rights (June 27, 1981, CAB/LEG/67/3 rev. 5, 21 ILM 58 (1982)) reads as follows:

Article 7

"1. Everyone has the right to have their case heard. This right includes:

has. the right to refer to the competent national courts any act violating the fundamental rights recognized and guaranteed by the conventions, laws, regulations and customs in force (...)"

IV. EUROPEAN UNION LAW

51. The relevant article of the Charter of Fundamental Rights of the European Union (OJ 2012/C 326/391) is worded as follows:

Article 47

Right to an effective remedy and access to an impartial tribunal

« (...)

Everyone has the right to have their case heard fairly, publicly and within a reasonable time by an independent and impartial tribunal, previously established by law. Everyone has the opportunity to be advised, defended and represented.

(...) »

PLACE

I. PRELIMINARY QUESTIONS

A. The preliminary objection raised by the Government

52. In his written observations, without giving details, the Government invites the Court to declare the application inadmissible.

53. The applicant asks the Court to reject the objection.

54. The Grand Chamber may examine, where appropriate, questions relating to the admissibility of the application under Article 35 § 4 of the Convention, according to which the Court may “at any stage of the procedure” reject an application. request which it considers inadmissible. Therefore, even at the stage of examination on the merits, subject to what is provided for in Article 55 of its Rules, the Court may reconsider the decision by which the application was declared admissible when it finds that -it should have been considered inadmissible for one of the reasons listed in paragraphs 1 to 3 of Article 35 of the Convention (see, for example, *Muršiÿ v. Croatia* [GC], no. 7334/13, § 69, ECHR 2016, and the case law cited).

55. The Court does not consider it necessary to determine whether the Government is estopped, by virtue of Article 55 of its Rules of Procedure, from raising this objection given that, in any event, it is not substantiated and that it must therefore be rejected.

B. The subject matter of the dispute before the Grand Chamber

56. The Court recalls at the outset that the content and subject matter of the case referred to it are delimited by the Chamber's decision on admissibility. Thus, the Grand Chamber can only examine the case to the extent that it has been declared admissible; it cannot examine the parts of the application which have been declared inadmissible (see, among many others, *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], no. 5809/08, § 78, ECHR 2016, and the case law cited).

57. The applicant raises several complaints before the Grand Chamber which concern an alleged lack of fairness in the civil procedure before the domestic courts and were declared inadmissible during the proceedings before the Chamber (paragraph 4 above and §§ 42 -44 of the Chamber's judgment). In these circumstances, the Grand Chamber has no jurisdiction to rule on any of the questions raised by these separate complaints under Article 6 § 1 of the Convention. However, to the extent that some of these issues may have a bearing on the overall assessment of the applicant's complaint that she did not have access to a court (paragraphs 84 and 107 below), the Court will return to them in the remainder of his analysis.

58. In conclusion, the jurisdiction of the Grand Chamber is limited to determining whether, contrary to Article 6 § 1 of the Convention, the applicant's right of access to the Supreme Court has been unjustifiably restricted.

II. ON THE ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

59. The applicant alleges that she did not have access to the Supreme Court. She sees this as a violation of Article 6 § 1 of the Convention. This provision is worded as follows in its relevant passages in this case:

> "Everyone has the right to have their case heard fairly (...) by a court (...) which will decide (...) disputes over their civil rights and obligations (...)"

A. The Chamber's judgment

60. The chamber noted that, although they had not formally ruled on the modification of the value of the subject matter of the dispute, the courts of first and second instance had accepted the amount of the value indicated by the plaintiff when of the hearing of April 6, 2005. Furthermore, it noted that these courts had ordered the applicant to pay legal costs and costs by calculating them on the basis of this considerably higher value. It therefore concluded that, even assuming that the lower courts had erred in allowing the plaintiff to change the value of the subject matter of the dispute at a late stage of the proceedings, i.e. at a time when the procedural conditions for such an amendment were not met, the applicant's predecessor had acted in a reasonable manner in filing his appeal and expecting a decision on the merits from the Supreme Court.

61. In this regard, the chamber recalled that the risks linked to errors that may be made by public authorities must be borne by the State and that such errors must not be corrected to the detriment of the persons concerned. It considered that, according to this principle, the Supreme Court, which was perfectly aware of all the circumstances of the case and of the error that the lower courts had made, had interpreted the procedural rules relating to the value of the subject of the dispute by displaying excessive formality, which had the result of making the applicant suffer the consequences of the errors committed by the lower courts even though at this stage of the proceedings the applicant was apparently not no longer able to contest the legal fees and costs she had been ordered to pay. In these circumstances, the chamber ruled that, by imposing the consequences of these errors on the applicant, the Supreme Court had infringed the general principle of procedural fairness inherent in Article 6 § 1 of the Convention and undermined the right of access to a court which was guaranteed to the applicant.

It considered that this was sufficient to conclude that there had been a violation of Article 6 § 1 of the Convention.

B. The parties' observations

1. The applicant

62. The applicant maintains that during the hearing of April 6, 2005 before the municipal court the applicant modified his claims when he invited the court to declare the nullity of the power of attorney used for the conclusion of the property exchange contract . It indicates that, during the same hearing, the applicant also requested the application of an interim measure. It argues that the plaintiff thus modified his claims and that it could therefore be considered that he had also been authorized to increase the value of the subject of the dispute in accordance with domestic law. She adds that the courts of first and second instance accepted and validated the increased value of the subject of the dispute and ordered the plaintiff to pay an amount based on this value. It further states that the increased value was also accepted by the defendants, that they requested reimbursement of legal costs based on the higher amount and that they never raised any objection to their obligation to pay higher fees for recording their response to the document instituting proceedings.

63. In this regard, the applicant submits that, in the context of the proceedings, the domestic courts placed her in a disadvantageous position by accepting the increased value of the subject matter of the dispute for the purposes of granting to the opposing party costs of a higher amount, while refusing to accept this increased value for the purposes of access to the Supreme Court. She also indicates that it was impossible for her to request reimbursement of the higher costs that she had paid. She adds that in reality the value of the property in question was considerably higher than the legal amount of the jurisdiction rate applicable to an appeal. According to her, the case should therefore have been examined by the Supreme Court.

64. Furthermore, the applicant explains that initially the applicant was represented by a lawyer practicing in Montenegro and not by a lawyer practicing in Croatia, which, according to her, was not authorized by domestic law. On this point, it indicates that the conditions relating to the rate of jurisdiction were not the same in Montenegro and Croatia and it deduces from this that the legislation of these two States in matters of civil procedure was different. She adds that, as soon as a lawyer practicing in Croatia represented the plaintiff, he increased the value of the subject matter of the dispute. In this context, she explains that, if it is true that this value was only increased during the second hearing at which a Croatian lawyer represented her, it is because this lawyer had been instructed just before the hearing on February 1 , 2005 and that he therefore did not have time to prepare. In any case, according to the applicant, the obvious and disproportionate difference between the value of the goods which were the subject of the dispute a

value of the claim indicated required the municipal court to assess ex officio the correct value of the dispute.

65. The applicant sees the impossibility, provided for by article 40 § 3 of the law on civil procedure, of modifying the value of the subject of the dispute after the preparatory hearing or, in the absence of a such hearing, during the main hearing, after the start of the examination on the merits, a formalistic restriction which prevents the Supreme Court from hearing cases in which the value at stake is high when it is the subject of a realistic assessment.

66. The applicant also asserts that, in order to fulfill the requirement relating to the exhaustion of domestic remedies before the Constitutional Court and before the Court, she was required to lodge an appeal.
She explains that, if she had had the slightest doubt about the admissibility of her appeal, she would have lodged a constitutional appeal directly against the county court's decision. However, she considers that she could legitimately expect that, in her case, an appeal would be admissible.
It considers that the case law of the Supreme Court relied on by the Government is essentially irrelevant in the present case.
For her, the relevant case law is that of the Constitutional Court according to which the parties should not suffer the consequences of formal errors made by the courts (paragraphs 46-47 above).

2. The Government

67. The Government explains that different models and procedural systems govern access to the supreme courts in the member States of the Council of Europe as well as appeals brought before them. He explains that in Croatia the Supreme Court is the highest court and its role is to protect the rule of law, harmonize the rules of law and ensure the equality of all citizens as well as respect rights and freedoms guaranteed by the Constitution. He adds that in civil matters access to the Supreme Court is limited to questions to be decided within the framework of an “ordinary” or “extraordinary” appeal, which according to him can only be brought against decisions of an appellate court (the competent county court).

68. In this regard, the Government indicates that an “ordinary” appeal is an appeal directed against a second instance decision rendered in a dispute whose value exceeds a certain threshold (HRK 100,000 at the material time). He adds that the grounds likely to justify such an appeal are those explicitly listed in Article 385 of the Civil Procedure Law (paragraph 33 above), namely a serious procedural defect and/or an erroneous application of the law. material. He goes on to explain that an “extraordinary” appeal concerns cases where an “ordinary” appeal is not authorized and where the case raises a question of harmonization of procedural and/or substantive law. According to the Government, in the present case, the applicant

was free to file an “extraordinary” appeal, but she did not do so. According to him, since it is exclusively up to the Supreme Court to rule on the admissibility of an appeal, this court is not bound by the errors made by the lower courts when they assess the admissibility of an appeal. an appeal.

69. The Government further explains that the Civil Procedure Law requires the plaintiff to specify the value of the subject matter of the dispute in his civil application. He considers this point to be important, explaining that this value determines the competence and composition of the court, legal representation and the right to appeal. According to the Government, the value in question is that of the main request, that of any other incidental request being treated separately. In the case of a civil claim of a non-pecuniary nature, the value of the subject of the dispute would be that indicated by the plaintiff, the court seized being able to intervene only if this value has been manifestly overestimated or underestimated. On the other hand, after the start of the examination of the case on the merits, neither the applicant nor the court seized could change this value. A modification of the value would only be possible in the event of a modification of the civil demand. Such a procedural rule would be necessary to ensure the equality of the parties, procedural rigor and legal certainty.

70. The judgment rendered by the Supreme Court in the applicant's case would not be excessively formalistic and would not undermine the very substance of the applicant's right of access to a court. In particular, this judgment would have been founded in law and it would have followed the well-established case law of the Supreme Court. It could therefore not be said that it was arbitrary or manifestly unreasonable.

71. Furthermore, the restriction placed on the applicant's access to the Supreme Court pursued the legitimate aim of ensuring that the high court was only seized of sufficiently important cases and thus of preserving its effectiveness. The restriction in question would have been proportionate. Indeed, the action in this case would have been examined on its merits by the domestic courts at two levels of jurisdiction and, represented by a lawyer, the applicant should have known that the value of the subject of the dispute could not be changed an advanced stage of the procedure. Furthermore, the plaintiff could have changed the value of the dispute when his Croatian lawyer started representing him, but he would not have done so. Instead, the applicant would have modified this value at a stage of the procedure where, according to the applicable law and the consistent practice of the Supreme Court, this would no longer have been possible, unless it modified the original application in accordance with to domestic law. Furthermore, the position of the defendants should be protected in the proceedings. In this case, the defendants could have legitimately expected that the case would be concluded in the second instance without further review by the Supreme Court. On the other hand, the applicant could not have entertained any ho

legitimate to have access to the Supreme Court, particularly because of the decisive error made by his predecessor concerning the value of the subject of the dispute. Indeed, the applicant's predecessor attempted to modify that value at a stage where this would no longer have been possible under the applicable procedural rules. Furthermore, the value of the dispute, initially set at HRK 10,000, could not be considered manifestly erroneous. In any case, the State should not assume responsibility either for the applicant's initial choice to instruct a lawyer practicing in Montenegro or for the acts carried out by the latter. Finally, whether in Montenegro or Croatia, the law on civil procedure would have its origins in the same previous legislation of the former Yugoslavia, which would have allowed the lawyer practicing in Montenegro to represent the applicant effectively.

72. There is no evidence that the applicant actually paid the defendants the costs and expenses that she was ordered to pay. The applicant's predecessor, who allegedly made errors when he indicated the value of the subject matter of the dispute, would be solely responsible for the amount of costs and expenses. In any case, this would be a property question falling under Article 1 of Protocol No. 1 and not Article 6 of the Convention. The applicant's predecessor never requested exemption from costs. He would also have had the possibility, within one year following the date of payment (until June 5, 2007), to request reimbursement of costs whose amount resulted from an erroneous calculation.

However, he would never have made such a request. In these circumstances, although the error made by the trial court in calculating costs and expenses was regrettable, it would not in itself be sufficient to find a violation of Article 6.

C. Assessment of the Court

1. Preliminary observations

73. The Court considers it important to note that the present case does not concern the question whether the imposition by the national system of restrictions on access to the Supreme Court is authorized by Article 6 § 1 of the Convention nor the limits of the possible modalities of such restrictions. Indeed, the parties do not dispute either that restrictions on access to the Supreme Court by means of a jurisdictional rate are generally authorized, nor that restrictions of this type are legitimate for the purposes of Article 6 § 1. Furthermore, given that it is impossible to expect the functioning of supreme courts in Europe to follow a uniform pattern, and having regard to the Court's jurisprudence on this point (paragraph 83 below), it There is no reason in this case to question the legitimacy and lawfulness of such restrictions, nor the margin of appreciation which national authorities have when determining their terms.

74. The present case rather concerns the way in which the conditions in force relating to the rate of jurisdiction were applied to the applicant. In particular, it raises the question of whether, in the present case, when it declared the appellant's appeal inadmissible, the Supreme Court demonstrated excessive formalism and disproportionately undermined the discretion of the applicant to seize it to obtain a final decision on a real estate dispute, this option being moreover guaranteed in national law. In more general terms, the present case requires the Court to explain how to assess the application of measures restricting access to higher courts.

75. As part of this analysis, the Court will first set out its case-law concerning restrictions on access to a court in general, in particular the general case-law relating to restrictions on access to higher courts. It will then analyze the case law relating to restrictions on access to higher courts arising from the jurisdiction rate. It will then address the questions of proportionality specifically raised in this case, and more precisely that of knowing who should bear the negative consequences of errors made during the procedure, as well as that of excessive formalism.

2. Reminder of relevant principles

a) General principles relating to access to a court

76. The right of access to a court was defined in the *Golder v. United Kingdom* (21 February 1975, §§ 28-36, Series A no. 18) as an aspect of the right to a tribunal within the meaning of Article 6 § 1 of the Convention. Referring to the principles of the rule of law and the prohibition of any arbitrary power which largely underlie the Convention, the Court concluded that the right of access to a court was an element inherent to the guarantees enshrined by Article 6. Thus, Article 6 § 1 guarantees everyone the right to have a court rule on any dispute relating to their civil rights and obligations *(Roche v. United Kingdom* [GC], o 32555 /96, § 116, ECHR 2005-X; see also *Z and Others v. United Kingdom*
n
[GC], no. 29392/95, § 91, ECHR 2001-V, *Cudak v. Lithuania* [GC], o 15869/02, § 54,
n ECHR 2010, and *Lupeni Greek Catholic Parish*
and others c. Romania [GC], no. 76943/11, § 84, ECHR 2016 (extracts)).

77. The right of access to a court must be “concrete and effective” and not “theoretical and illusory” (see to this effect *Bellet v. France,* December 4, 1995, § 36, Series A no. 333-B). This observation applies in particular to the guarantees provided for in Article 6, given the eminent place that the right to a fair trial occupies in a democratic society *(Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98 , § 45, CEDH 2001-VIII, and *Paroisse Greco-Catholic Lupeni and others,* cited above,

§ 86).

78. The right of access to the courts being, however, not absolute, it may give rise to implicitly accepted limitations because by its very nature it calls for regulation by the State, regulation which may vary over time and over time. space according to the needs and resources of the community and individuals *(Stanev v. Bulgaria* [GC], no. 36760/06, § 230, ECHR 2012). In developing such regulations, Contracting States enjoy a certain margin of appreciation. Although it is up to the Court to make a final decision on compliance with the requirements of the Convention, it does not have the authority to replace the assessment of the national authorities with another assessment of what the best policy in this matter could be. . However, the limitations applied cannot restrict access to the individual in such a way or to such an extent that the very substance of the right is affected. Furthermore, they are only compatible with Article 6 § 1 if they pursue a legitimate aim and if there is a reasonable relationship of proportionality between the means employed and the aim pursued *(Paroisse Gréco-Catholic Lupeni and others,* cited above, § 89, and the case law cited).

79. The Court also recalls that it is not up to it to examine errors of fact or law possibly committed by a domestic court, unless and to the extent that they may have infringed the rights and freedoms protected by the Convention (see, for example, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, and *Perez v. France* [GC], no. 47287/99, § 82, ECHR 2004-I). In principle, questions such as the weight attached by national courts to this or that piece of evidence or to this or that conclusion or assessment which they have had to hear are beyond the control of the Court. The latter does not have to act as a judge of fourth instance and it does not call into question from the angle of Article 6 § 1 the assessment of the national courts, unless their conclusions could be considered arbitrary or manifestly unreasonable *(Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 61, ECHR 2015).

b) General principles relating to access to a higher court, as well as restrictions in this regard arising from the rate of jurisdiction

80. Article 6 of the Convention does not require Contracting States to create courts of appeal or cassation. However, if such jurisdictions exist, the guarantees of Article 6 must be respected, in particular in that it ensures litigants an effective right of access to the courts for decisions relating to their civil rights and obligations (Andrejeva *v. Latvia* [GC], no. 55707/00, § 97, ECHR 2009; see also *Levages Prestations Services v. France,* 23 October 1996, § 44, *Reports of judgments and decisions* 1996-V, *Brualla Gómez de la Torre v. Spain,* 19 December 1997, § 37, *Reports* 1997-VIII, and *Annoni di Gussola and others v. France,* os 31819/96 and 33293/96, § 54, ECHR 2000-XI).

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81. It is not, however, for the Court to assess the appropriateness of the choices made by the Contracting States in relation to restrictions on access to a court; its role is limited to verifying compliance with the Convention of the consequences resulting from it. Nor is it for the Court to resolve disputes relating to the interpretation of domestic law governing access to a court, its role being rather to verify the compatibility with the Convention of the effects of such an interpretation (see, for example example, *Platakou v. Greece,* no. 38460/97, §§ 37-39, ECHR 2001-I, *Yagtzilar and Others v. Greece,* no. 41727/98, § 25, ECHR 2001-XII, and *Bulfracht Ltd v. Croatia,* o 53261/08, § 35, June 21, 2011).

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82. In this regard, it should be remembered that the manner in which Article 6 § 1 applies to the courts of appeal or cassation depends on the particularities of the procedure in question. To judge this, it is necessary to take into account the entire trial carried out in the domestic legal order and the role played in it by the court of cassation, the conditions for admissibility of an appeal may be more rigorous than for an appeal. *(Levages Prestations Services,* cited above, § 45, *Brualla Gómez de la Torre,* cited above, § 37, and *Kozlica v. Croatia,* no. 29182/03, § 32, 2 November 2006; see also *Shamoyan v. Armenia,* no. 18499/08 , § 29, July 7, 2015).

83. Furthermore, the Court recognized that the fixing by law of a specific threshold for the rate of the jurisdiction applicable to appeals before a supreme court amounts to the imposition of a legitimate and reasonable procedural requirement, taking into account of the very essence of the role played by this court, which is only called upon to deal with cases presenting the required level of importance *(Brualla Gómez de la Torre,* cited above, § 36, *Kozlica,* cited above, § 33, *Bulfracht Ltd,* cited above, § 34, *Dobriÿ v. Serbia,* nos. 2611/07 and 15276/07, § 54, June 21, 2011, and *Jovanoviÿ v. Serbia,* no. 32299/08, § 48, October 2, 2012).

84. Furthermore, when it had to assess whether the proceedings before a court of appeal or cassation had complied with the requirements of Article 6 § 1, the Court took into account the extent to which the case had been examined by the lower courts, from the point of knowing whether the procedure

before these courts raised questions concerning fairness, and the role of the court concerned (see, concerning the relevant factors, *Levages Prestations Services,* cited above, §§ 45-49, *Brualla Gómez de la Torre,* cited above, §§ 37- 39, *Sotiris and Nikos Koutras ATTEE v. Greece,* no. 39442/98, § 22, ECHR 2000-XII, and *Nakov v. the former Yugoslav Republic of Macedonia* (dec.), no. 68286/01, October 24, 2002) .

85. Furthermore, with regard to the application of legal restrictions on access to higher courts arising from the rate of jurisdiction, the Court took into consideration, to different degrees, certain other factors: i) the foreseeability of the restriction , (ii) whether it is the applicant or the respondent State which must bear the negative consequences of the errors committed during the procedure and which had the effect of depriving the applicant of access to the supreme jurisdiction , and iii) that of knowing whether the restrictions in question can be seen as revealing “excessive formalism” (see, in particular, *Garziÿiÿ v. Montenegro,* no. 17931/07, §§ 30-32, September 21, 2010, *Dobriÿ,* cited above, §§ 49-51, *Jovanoviÿ,* cited above, §§ 46-51, *Egiÿ v. Croatia,* no. 32806/09, §§ 46-49 and 57, June 5, 2014, *Sociedad Anónima del Ucieza v. Spain,* no. 38963/08 , §§ 33-35, November 4, 2014, and *Hasan Tunç and Others v. Turkey,* no. 19074/05, §§ 30-34, January 31, 2017). Each of these criteria will be examined in more detail below.

86. Before undertaking this examination, the Court wishes to recall by way of general observation that it is primarily for the national supreme court, when domestic law requires it, to say whether a legal threshold for the rate of the jurisdiction applicable to an appeal before it is reached. Therefore, in a situation where domestic law authorizes it to filter the cases presented to it, the Supreme Court cannot be bound by the errors made by the lower courts in the assessment of this threshold when it is called upon to decide whether it can be seized or not *(Dobriÿ,* cited above, § 54).

i. The requirement of predictability of the restriction

87. As for the first of the criteria listed above, the Court has on several occasions attached particular importance to the point of knowing whether the methods of exercising the appeal could be considered predictable in the eyes of the litigant. The Court examines this point to establish whether the sanction for non-compliance with these terms breached the principle of proportionality (see also, for example, *Mohr v. Luxembourg* (dec.), no. 29236/95, April 20, 1999, *Lanschützer GmbH v. Austria* (dec.), no. 17402/08, § 33, March 18, 2014, and *Henrioud v. France,* no. 21444/11, §§ 60-66, November 5, 2015).

88. In principle, constant judicial practice at national level and the consistent application thereof satisfy the criterion of foreseeability of a restriction on access to the higher court (see, for example, Levages Prestations Services, cited *above ,* § 42, *Brualla Gómez de la Torre,* cited above,

§ 32, *Lanschützer GmbH,* cited above, § 34; see, however, *Dumitru Gheorghe v. Romania,* no. 33883/06, §§ 32-34, April 12, 2016).

89. The same considerations guided the Court in its approach to cases relating to restrictions on access to higher courts arising from the rate of jurisdiction *(Jovanoviÿ,* § 48, and *Egiÿ,* §§ 49 and 57, both cited above). The Court also assesses whether the applicant could have been aware of the practice in question and establishes whether he was represented by a qualified lawyer *(Levages Prestations Services,* § 42, and *Henrioud,* § 61, both cited above).

ii. On the burden of negative consequences of errors committed during the procedure

90. With regard to the second criterion, it is not uncommon for, in order to decide the question of proportionality, the Court identifies the procedural errors committed during the procedure and which, ultimately, prevented the applicant from accessing to a court, and determine whether the person concerned had to bear an excessive burden as a result of these errors. When the procedural error in question is attributable only to one side, depending on the case that of the applicant or that of the competent authorities, in particular the court (or courts), the Court usually tends to place the burden on the party who made the error (see, for example, *Laskowska v. Poland,* o 77765/01, §§ 60-61, n March 13, 2007, *Jovanoviÿ,* cited above, § 46 *in fine, Šimecki v. Croatia,* no. 15253/10 , §§ 46-47, April 30, 2014, *Egiÿ,* cited above, § 57, and *Sefer Yÿlmaz and Meryem Yÿlmaz v. Turkey,* no. 611/12, §§ 72-73, November 17, 2015).

91. Situations in which procedural errors have been committed both on the part of the applicant and that of the competent authorities, in particular the court (or courts), are, however, more problematic. In such cases, the Court's case law does not set out a clear rule for determining who must bear the burden of these errors. The solution then depends on all the circumstances of the case considered as a whole.

92. It is nevertheless possible to discern reference criteria in the Court's case-law. In particular, the following considerations should guide the Court when considering who should bear the consequences of the errors committed.

93. First, it must be established whether the applicant was represented during the procedure and whether he and/or his legal representative showed the required diligence in carrying out the relevant procedural acts. Indeed, procedural rights and procedural obligations normally go hand in hand. The Court also emphasizes that the parties are required to diligently complete the procedural acts relating to their case (see *Bÿkowska v. Poland,* no. 33539/02, § 54, 12 January 2010, and, *mutatis mutandis, Unión Alimentaria Sanders SA v. Spain,*

July 7, 1989, § 35, Series A no. 157). Furthermore, it insisted on the question of the applicants' access to legal representation (see, for example, *Levages Prestations Services,* cited above, § 48, and *Lorger v. Slovenia* (dec.), o n 54213/12, § 22, January 26, 2016).

94. Secondly, the Court takes into account whether the errors committed could have been avoided from the start (see, for example, *Edificaciones March Gallego SA v. Spain,* 19 February 1998, § 35, *Reports* 1998-I).

95. Third, the Court determines whether the errors are mainly or objectively attributable to the applicant or to the competent authorities, in particular the court (or courts). In particular, a restriction on access to a court is disproportionate when the inadmissibility of an appeal results from the attribution to the applicant of a fault for which he is not objectively responsible *(Examiliotis v. Greece (no. 2),* no. 28340/02, § 28, 4 May 2006; see also *Platakou,* cited above, §§ 39 and 49, *Sotiris and Nikos Koutras ATTEE,* cited above, § 21, and *Freitag v. Germany,* no. 71440/01, § § 39-42, July 19, 2007).

iii. The criterion of “excessive formalism”

96. As for the third criterion, the Court emphasizes that compliance with formal rules of civil procedure, which allow the parties to have a civil dispute resolved, is useful and important, because it is likely to limit discretionary power, to ensure equality of arms, to prevent arbitrariness, to allow a dispute to be resolved and judged effectively and within a reasonable time, and to guarantee legal certainty and respect for the court.

97. It is, however, well established in the Court's case-law that “excessive formalism” can harm the guarantee of a “concrete and effective” right of access to a court arising from Article 6 § 1 of the Convention (paragraph 77 above). Such formalism may result from a particularly rigorous interpretation of a procedural rule, which prevents examination of the merits of an applicant's action and constitutes an element likely to result in a violation of the right to effective protection by the courts and courts *(Bÿleš and others v. Czech Republic,* o 47273/99, §§ 50-51 and 69, ECHR 2002-IX, and *Walchli v. France,* n o 35787/03, § 29, July 26, 2007).
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98. In order to rule on a complaint based on excessive formalism having tainted the decisions of the domestic courts, the Court in principle examines the case as a whole *(Bÿleš and Others,* cited above, § 69), having regard to the particular circumstances of the latter (see, for example, *Stagno v. Belgium,* no. 1062/07, §§ 33-35, 7 July 2009, and *Fatma Nur Erten and Adnan Erten v. Turkey,* no. 14674/11, §§ 29-32 , November 25, 2014). In carrying out this examination, the Court often emphasizes “legal certainty” and the “good administration of justice”, two central elements

making it possible to distinguish between excessive formalism and acceptable application of procedural formalities. It notably ruled that the right of access to a court is violated in its substance when its regulations cease to serve the purposes of legal certainty and the good administration of justice and constitute a sort of barrier which prevents the litigant from see its dispute decided on the merits by the competent court (see, for example, *Kart v. Turkey* [GC], no. 8917/05, § 79 *in fine,* ECHR 2009 (extracts), as well as *Efstathiou and others v. Greece,* no 36998/02, § 24 *in fine,* July 27, 2006, and *Eÿim v. Turkey,* no. 59601/09, § 21, September 17, 2013).

99. In subsequent case law, the above guidelines have been systematically followed when determining whether the interpretation of a procedural rule had unjustifiably restricted an applicant's right of access to a court (see the following cases, in which a violation was found: *Nowiÿski v. Poland,* o 25924/06, § 34, 20 October 2009, *Omeroviÿ v. Croatia (no 2),* o 22980/09, § 45, 5 December 2013 , n *Mašireviÿ v. Serbia,* no. 30671/08, § 51, 11 February 2014, *Cornea v. Republic* n *of Moldova,* no. 22735/07, § 24, 22 July 2014, and *Louli-Georgopoulou v. Greece,* no. 22756/09, § 48, March 16, 2017, and the following cases, where it was concluded that the restriction on access to a court had not been disproportionate: *Wells v. United Kingdom,* o 37794/05 (dec.), 16 January 2007, and *Dunn v. United Kingdom* (dec.), o 62793/10, § 38, 23 October 2012). The Court sees no reason to n depart from this case law in the present case.
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3. Application of these principles to the present case

100. The Court notes at the outset that the applicant became a party to the civil proceedings in question following the death of her husband, who had appealed to the Supreme Court (paragraphs 28-29 above).
When she continued the proceedings before this court, the applicant was bound by the procedural choices made by her husband. Furthermore, no argument has been put forward that, from the perspective of domestic law or for the purposes of the right of access to a court guaranteed by Article 6 § 1 of the Convention, the applicant's standing to bring proceedings should be appreciated differently from that of her late husband. Given that the applicant must be assimilated to her late husband with regard to the procedural choices made by him before she became a party to the proceedings, the acts having been carried out by him will be deemed to have been carried out by She. The Court will therefore use the term “applicant” for the entire domestic procedure.

a) The restriction placed on the applicant's access to the Supreme Court

101. The Court notes that, in the Croatian legal order, access to the Supreme Court in civil matters is by way of appeal (cassation), which, as the Government explained, can be “ordinary " Or

" extraordinary ". The “ordinary” appeal, which is at issue in the present case, is provided for in Article 382 § 1, point 1, of the Civil Procedure Act. It concerns disputes in which the value of the contested part of the decision exceeds a certain threshold (HRK 100,000 at the material time). As soon as this is achieved, access to the Supreme Court acquires the nature of an individual right. Furthermore, the “extraordinary” appeal concerns cases where an “ordinary” appeal is not authorized. It is governed by article 382 § 1, point 2, of the law on civil procedure and it concerns cases where "the decision which will resolve the dispute depends on the resolution of a substantive or procedural question which is important with a view to ensuring uniform application of the law and equality of citizens. » On appeal, whether it is the first or the second form of this appeal limited to points of law, the Supreme Court can annul the decisions of the lower courts and send the case back to them or, in certain cases, substitute its own decision for that that it cripples. In any case, the Supreme Court has the power to declare inadmissible any appeal which does not meet the relevant legal conditions (paragraph 33 below).

102. In the present case, the applicant filed an “ordinary” appeal, considering that the value of the claim reached the legal threshold of HRK 100,000 which determined the rate of jurisdiction. The Supreme Court, however, declared this appeal inadmissible on the grounds that it presented a request for an amount lower than this rate. It considered that the value which had to be taken into account for the subject of the dispute was that which the plaintiff had indicated in his initial request at the start of the civil action, namely 10,000 HRK (amount below the legal threshold of 100,000 HRK), and not that indicated at the hearing on April 6, 2005. To rule thus, the Supreme Court based itself on Article 40 § 3 of the Civil Procedure Act, according to which the value of the object of the dispute may be modified at the latest during the preparatory hearing or, in the absence of a preparatory hearing, during the first session of the main hearing, before the defendant has started to present his arguments to the bottom. The high court also pointed out that when the applicant sought to increase the value of the dispute, she did not amend her civil claim. According to the Supreme Court, such a modification would have allowed the value of the dispute to increase (paragraphs 30 and 33 above). This decision was in accordance with the usual practice of the Supreme Court in this matter (paragraphs 35-45 above).

103. Taking into account the above, the Court emphasizes that, by its nature, the restriction in question, which arises from domestic law and the practice of the Supreme Court, does not appear in itself to be the result of inflexible procedural rules. The relevant law and practice provided for the possibility of changing the value of the dispute on the basis of Article 40 § 3 of the Civil Procedure Act, which would have allowed access to the Supreme Court in the event of a change in circumstances. of the affair. Furthermore,

even if she could not lodge an “ordinary” appeal under Article 382 § 1, point 1, of the Civil Procedure Act, the applicant had complete freedom to lodge the “extraordinary” appeal provided for by Article 382, § 1, point 2, of the same law, which would have given him access to the Supreme Court. However, as the Government pointed out, the applicant did not take advantage of this possibility.

104. Having regard to these considerations, the Court will examine whether the restriction in question was justified, that is to say whether it pursued a legitimate aim and was proportionate to that aim.

b) The question of whether the restriction pursued a legitimate aim

105. The Court observes that the contested restriction which was placed on access to the Supreme Court, namely the fixing by law of a specific threshold for the rate of the jurisdiction applicable to appeals before this court, constitutes a legitimate aim generally recognized which is to guarantee that it, taking into account the very essence of its role, is only called upon to deal with cases presenting the required level of importance (paragraph 83 above).

106. Furthermore, according to Article 119 of the Constitution, the main function of the Supreme Court, as the highest court in Croatia, is to ensure uniform application of the law and equality of all before the law (paragraph 32 above). Having regard to this function, the Court sees no reason to doubt that the Supreme Court, in examining in its decision the irregularities committed in determining the value of the dispute before the lower courts, was pursuing a legitimate aim, respect for the rule of law and good administration of justice. It is therefore necessary to verify whether, in the light of all the relevant circumstances of the case, there was a reasonable relationship of proportionality between that aim and the means used to achieve it.

(c) Whether the restriction was proportionate

107. As has already been noted in paragraph 73 above, the Court sees no reason to question the legitimacy and lawfulness of the restrictions on access to the Supreme Court imposed by means of a jurisdictional rate, nor the margin of appreciation which the national authorities have when they determine the modalities. Before assessing the proportionality of the restriction in question, the Court nevertheless considers it important to delimit the extent of this margin of appreciation in the manner of applying the rules relating to the rate of jurisdiction in this case. To this end, it takes into consideration the extent to which the case was considered by the lower courts, whether the proceedings before those courts raised questions regarding fairness, as well as the nature of the Court's role. supreme (paragraph 84 above).

108. As for the first of these criteria, the Court notes that the applicant's case was examined by domestic courts at two levels of jurisdiction (municipal court and county court), both of which had full jurisdiction. Furthermore, with regard to the second criterion, it notes that, having regard to the complaints which were declared inadmissible (paragraph 57 above), no issue relating to a lack of fairness can be discerned in the present case. As for the third criterion, it observes that the role of the Supreme Court was limited to monitoring the application of the relevant domestic law by the lower courts, the conditions for admissibility of an appeal could then be more rigorous than for an appeal *(Brualla Gómez de la Torre,* cited above, § 37 *in fine).* In these circumstances, it considers that the authorities of the respondent State have a wide margin of appreciation in the way of applying in this case the restrictions resulting from the rate of the jurisdiction.

109. This does not mean, however, that national authorities enjoy unlimited discretion in this regard. When the Court examines whether these authorities have exceeded their margin of appreciation, it must be particularly attentive to the three criteria set out in paragraph 85 above, namely (i) the foreseeability of the methods of exercising the appeal, (ii) the point who should bear the negative consequences of errors committed during the procedure and (iii) whether excessive formality restricted the person concerned's access to the Supreme Court.

i. The predictability of the restriction

110. As for the predictability of the modalities for exercising the appeal, it should be noted that the case law of the Supreme Court is consistent and clear on the following point: when, as is the case in the present case, the value of the subject of the dispute is modified at an advanced stage of the procedure in disregard of the procedural conditions set out in Article 40 § 3 of the Civil Procedure Act, an appeal cannot be declared admissible. This applies whether the procedural error committed is attributable to the lower courts or to one party (paragraphs 35-43 above).

111. Furthermore, according to Article 40 § 3 of the Civil Procedure Act, a change in the value of the subject matter of the dispute must be the subject of a separate decision (paragraph 33 above). In the present case, both at the time when such a decision could have been requested (i.e. at the hearing on February 1 , 2005) and at the time when the applicant actually requested, in violation of Article 40 § 3, the modification of the value of the subject matter of the dispute, the interested party was represented by a qualified lawyer practicing in Croatia, who was supposed to be familiar with the conditions set out in this provision as well as the established case law of the Supreme Court. Therefore, regardless of the fact that the lower courts could be said to have accepted the increased value (at least for the purposes of calculating the mandatory costs), the

applicant and her lawyer were clearly able to understand from domestic provisions and case law that, in the absence of a specific decision to this effect rendered by the court of first instance, the modification of the value of the subject of the dispute at an advanced stage of the procedure could not be taken into consideration for the purposes of access to the Supreme Court.

112. In these circumstances, the applicant cannot invoke the case law of the Constitutional Court to validly argue that she should have had access to the Supreme Court. Indeed, this case law concerned a situation in which the procedural error committed before the lower courts had affected the entire procedure; these were not isolated errors on a crucial point made by an applicant.

113. The foregoing considerations are sufficient for the Court to conclude that the terms of appeal were subject to coherent and predictable rules.

ii. On the burden of negative consequences of errors committed during the procedure

114. With regard to the second criterion, it should be noted that both the applicant and the courts of first and second instance committed several procedural errors in determining the value of the subject of the dispute. However, in the Court's opinion, these errors are mainly and objectively attributable to the applicant.

115. In particular, it is true that when she initiated her civil action, the applicant was not represented by a lawyer practicing in Croatia but by a lawyer from Montenegro (paragraph 12 above). However, the applicant was entirely free to instruct a lawyer practicing in Croatia and, in fact, at a later stage of the proceedings, she instructed Mr IB to defend her case before the courts (paragraph 19 above) . Consequently, the fact that the first representative indicated in the initial request a value of the subject of the dispute considered inappropriate is exclusively attributable to the individual choice of the applicant as to her legal representation.

116. It should also be noted that, according to the relevant domestic case law, the applicant had the right to set the value of the subject matter of the dispute at an amount which did not necessarily correspond to the market value of the disputed property (paragraph 35 above). In fact, the value of the subject matter of the dispute which the applicant subsequently indicated at the hearing on 6 April 2005 did not correspond to the value attributed to the goods in the initial application (paragraphs 13 and 20 above). The Court cannot therefore give weight to the applicant's argument that the difference in amount between the indicated value and the true value of the property was disproportionate.

117. Furthermore, the parties do not dispute that, until the presentation by the defendants of their arguments on the merits, namely on February 1 , 2005, the value initially indicated could be modified. However, although at the hearing held on that date she was represented by a lawyer practicing in Croatia, the applicant did not request a modification of the value of the subject of the dispute. It did so only at a later stage in the proceedings, after the defendants had already started to present their arguments on the merits. However, the relevant domestic law did not permit the submission of a request for modification at that stage (paragraphs 33 and 35-43 above). The fact that the applicant's lawyer had just resumed the case just before the hearing on February 1 , 2005 cannot justify his late request for modification. In reality, during this hearing, the lawyer effectively and extensively presented his arguments on the merits of the case (paragraph 19 above) and he should therefore have been able to also request the modification of the value of the subject of the dispute by complying with the conditions set out by domestic law (paragraph 94 above).

118. With regard to the applicant's argument that, at the hearing on 6 April 2005, she amended her civil claim, which according to her authorized her to also change the value of the object of the dispute (paragraphs 44-45 above), the Court notes that the Supreme Court held that there had been no such amendment to the civil claim (paragraph 30 above). Given that it is primarily for the national courts to interpret domestic law and that the decision of the Supreme Court, rendered in full knowledge of the facts, does not appear arbitrary or manifestly unreasonable (paragraph 79 above), the Court sees no reason to question the conclusion of the high court on this point.

119. It is true that the municipal court, in disregard of the conditions set out in Article 40 § 3 of the Civil Procedure Act, made the error of not ruling on the applicant's proposal to modify the value of the subject of the dispute and ordered it to pay registration fees as well as other costs and expenses to the defendants calculated on the basis of the increased value. It is also true that the County Court confirmed the position taken by the Municipal Court (paragraphs 25-27 above). The errors made by these two courts should not, however, be considered to justify the error made by the applicant in the manner in which she requested the modification of the value of the dispute. To decide otherwise would amount to admitting that the procedural error of one can be excused by that subsequently committed by the other, which would be contrary to the principle of the rule of law and the requirement for diligent and correct conduct. of procedure and prudence in the application of the relevant procedural rules (paragraph 93).

120. Furthermore, the Court considers that no legitimate expectation can arise from the erroneous procedural acts carried out by the applicant in the present case. It also follows that the fact that the applicant had to pay a higher amount of registration fees and other costs and expenses is mainly the consequence of its own conduct and that it cannot therefore be considered as conferring on it a right of access to the Supreme Court (see, however, *Hasan Tunç and others,* cited above, §§ 29-42). In these circumstances, the Court notes that it was open to the applicant's predecessor to request reimbursement of the costs, the amount of which resulted from an erroneous calculation, within one year following the date of their payment. However, the applicant never took advantage of this possibility.

121. In this context, it appears that the applicant, who was represented by a lawyer before the domestic courts, did not demonstrate the necessary diligence when she sought to increase the value of the subject matter of the dispute without respecting the requirements set by domestic law. The procedural errors in question could have been avoided from the start and, as they are mainly and objectively attributable to the applicant, it is she who must bear the negative consequences.

iii. The question of whether excessive formalism restricted the applicant's access to the Supreme Court

122. As for the criterion of excessive formalism, the Court considers, as it has already emphasized above, that it seems difficult to recognize that the Supreme Court, in a situation where domestic law authorized it to filter cases presented to it, was bound by the errors made by the lower courts when it was called upon to decide whether it could be seized or not. To hold otherwise could seriously hamper the work of the Supreme Court and prevent it from fulfilling its particular role. It appears from the Court's previous case-law that the power of a supreme court to rule on its jurisdiction cannot be limited in this way (paragraph 86 above). In any case, once we accept that there is no reason to question the procedural arrangements established by the Croatian Civil Procedure Law regarding the way of indicating the value of the dispute (paragraph 103 above), it cannot be said that the Supreme Court, in rendering its decision applying the mandatory provisions of this law, demonstrated excessive formalism.

123. On the contrary, the Court considers that the decision of the Supreme Court ensured legal certainty and good administration of justice (paragraph 98 above). In the present case, the high court simply restored the rule of law after an erroneous procedural act carried out by the applicant and the two lower courts during the proceedings in relation to a point affecting its jurisdiction. It thus confirmed the principle of effectiveness in the context of the administration of justice and, under these conditions, no question of excessive formalism arises .

a priori. The rule of law being a fundamental principle of democracy and the Convention (see, for example, *Baka v. Hungary* [GC], o 20261/12, § 117, ECHR n 2016), one cannot expect, on the on the basis of the Convention or on another basis, that the Supreme Court ignores or ignores obvious procedural irregularities.

124. Consequently, it cannot be affirmed that when it declared the appeal filed by the applicant inadmissible, the Supreme Court demonstrated “excessive formalism” which would result from an unreasonable and particularly rigorous application of the rules of procedure and which would have unjustifiably restricted the applicant's ability to seize it.

iv. Conclusion on proportionality

125. In these circumstances, considering that the applicant's case was examined by the domestic courts at two levels of jurisdiction (municipal court and county court), both having had full jurisdiction, that no question of equity does not appear to arise in the present case and the role of the Supreme Court was limited to monitoring the application of the relevant domestic law by the lower courts (paragraph 108 above), the Court cannot conclude that the decision of the high court constituted a disproportionate obstacle having undermined the very substance of the right of access to a court which is guaranteed to the applicant by Article 6 § 1 of the Convention, or having exceeded the national margin of 'appreciation.

d) General conclusion

126. Taking into account the above, the Court concludes that there has been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Rejects* the preliminary objection raised by the Government;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in French and English, then delivered in public hearing at the Human Rights Palace, in Strasbourg, on April 5, 2018.

Søren Prebensen
Assistant to the clerk

Guido Raimondi
President