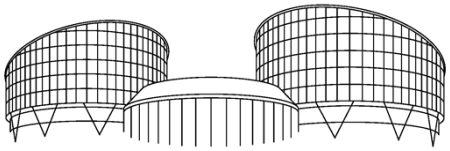

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF PAJIĆ v. CROATIA

(Application no. 68453/13)

JUDGMENT

STRASBOURG

23 February 2016

FINAL

23/05/2016

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

In the case of Pajić v. Croatia,

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

Işıl Karakaş, *President,*
Nebojša Vučinić,
Paul Lemmens,
Valeriu Griţco,
Ksenija Turković,
Stéphanie Mourou-Vikström,
Georges Ravarani, *judges,*

and Abel Campos, *Deputy Section Registrar,*

Having deliberated in private on 2 February 2016,

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

PROCEDURE

1. The case originated in an application (no. 68453/13) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a national of Bosnia and Herzegovina, Ms Danka Pajić ("the applicant"), on 23 October 2013.

2. The applicant was represented by Ms A. Bandalo and Ms N. Labavić, lawyers practising in Zagreb. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. The applicant alleged discrimination on the grounds of her sexual orientation in obtaining a residence permit in Croatia, contrary to Articles 8 and 14 of the Convention.

4. On 12 December 2013 the above complaints were communicated to the Government and the remainder of the application was declared inadmissible.

5. The Government of Bosnia and Herzegovina, having been informed of their right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 (a) of the Rules of Court), did not avail themselves of this possibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1973 and lives in Brčko, Bosnia and Herzegovina.

7. On 29 December 2011 the applicant lodged a request for a residence permit in Croatia on the grounds of family reunification with her partner, Ms D.B., who was living in Sisak. She submitted that she had been educated in Croatia and that she had lived in Zagreb for seventeen years. She also explained that she wanted to live with D.B., with whom she had been in a relationship for two years, and with whom she wanted to establish a household and start a business.

8. By a letter dated 28 December 2011 D.B. stated that she owned a house in Sisak where she wanted to live with the applicant. She explained that she had been in a relationship with the applicant for two years and that they wanted to live together so as to avoid constant travelling and the distance between them.

9. During the proceedings the Sisak Police Department (*Policijska uprava Sisačko-moslovačka*) found that the applicant and D.B. had been in a relationship since October 2009 and that in order to maintain their relationship they had been travelling to see each other. It was also established that the applicant had recently stayed with D.B. in the period between 16 September and 4 December 2011.

10. On 24 February 2012 the Sisak Police Department dismissed the applicant's request with a summary reasoning indicating that all the relevant requirements under the Aliens Act had not been met.

11. The applicant appealed against that decision to the Ministry of the Interior (*Ministarstvo unutarnjih poslova*; hereinafter: the "Ministry"), arguing that it could be inferred from the decision of the Sisak Police Department that her request had been dismissed because the Aliens Act did not allow family reunification for same-sex couples. She considered that there had been no grounds for a difference in treatment based on sexual orientation and that the relevant law should not be construed in a manner that allowed for such a possibility. She relied, *inter alia*, on the Constitution and the Prohibition of Discrimination Act, arguing that even if she was not to be considered as D.B.'s "immediate family member", within the meaning of the Aliens Act, she should in any case be considered as her "other relative" within the meaning of that Act.

12. On 8 June 2012 the Ministry dismissed the applicant's appeal and upheld the decision of the Sisak Police Department. The relevant part of the Ministry's decision reads:

> "Concerning the family reunification, based on which the request for the regularisation of the status of an alien in Croatia has been submitted in the case at issue, [it is to be noted that] the case file shows that the appellant relies on the existence of a same-sex relationship with the Croatian national D.B., which has allegedly lasted for two years ...
>
> The impugned decision shows that the [first-instance body], other than citing the [relevant] provisions of the Aliens Act, also cited section 3 of the Family Act, according to which the effects of an extramarital relationship, that is to say the rights and obligations following from its existence, relate to a union between an unmarried

woman and man which has lasted for at least three years, or less if a child was born of [the union]; and section 2 of the Same-Sex Union Act ... which defines a same-sex union as a union between two persons of the same sex (partners) who are not married, or in an extramarital relationship or other same-sex union, which has lasted for at least three years and which is based on the principles of equality of partners, mutual respect and assistance as well as the emotional bonds of partners.

...

It follows that the [Same-Sex Union] Act does not define a same-sex union as a family and the Family Act does not cover same-sex unions. It should also be taken into account that the provisions of the Aliens Act concerning temporary residence for family reunification do not provide for a possibility of regularisation of the status of an alien on the grounds of [the existence of] a same-sex union, nor does such a union fall within the scope of [the term] 'immediate family member' incorporated in that Act, which makes it clear that there is no legal ground for granting the request of the appellant.

Therefore, the appellant wrongly considers that the first-instance body should have applied section 56 § 4 of the Aliens Act in her case ... because that provision clearly provides that exceptionally to the provision defining immediate family members, 'other relative' could be so considered if there are specific personal or serious humanitarian reasons for a family reunification in Croatia."

13. On 24 July 2012 the applicant lodged an administrative action with the Zagreb Administrative Court (*Upravni sud u Zagrebu*), arguing that she had been discriminated against in comparison to different-sex couples who had a possibility to seek family reunification under the Aliens Act. She relied on the domestic anti-discrimination legislation, including the Prohibition of Discrimination Act, as well as the Convention and the Court's case-law.

14. The Zagreb Administrative Court dismissed the applicant's action on 30 January 2013. The relevant part of the judgment provides:

"The cited section 56 § 3(1) and (2) of the Aliens Act provides that the immediate family members are spouses or persons who live in an extramarital relationship in accordance with Croatian legislation. The cited sections 3 and 5 of the Family Act show that marriage and extramarital relationship are unions between a man and a woman. Thus, union between two same-sex persons cannot be considered under the relevant legal provisions as marriage or an extramarital relationship.

Union between two same-sex persons can be considered under the legal term same-sex union under the conditions provided for in section 2 of the Same-Sex Union Act. However, given the limited legal effects of a same-sex union, the possible existence of such a union does not represent a basis for family reunification. It should be noted that section 56 of the [Aliens] Act explicitly enumerates persons who are to be considered immediate family members or who are to be exceptionally considered [so], which leads to a conclusion that it cannot be extended to cover persons living in a same-sex union.

Accordingly, the granting of a request for temporary residence of an alien on the grounds of family reunification depends on the satisfaction of the requirements under sections 52 and 56 of the Aliens Act. In the case at issue the plaintiff is neither married nor in an extramarital relationship with the Croatian national D.B., which is

not in dispute between the parties. It therefore follows that the plaintiff cannot be considered an immediate family member within the meaning of section 56 § 1(1) and (2) of the [Aliens] Act and thus she did not justify the purpose (in the concrete case: family reunification) for which a temporary residence of an alien in Croatia can be granted ...

In view of the cited legal provisions, and the facts of the case, this court finds that in the concrete case it was not possible to grant the plaintiff's request."

15. On 8 March 2013 the applicant lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*), contending that she had been discriminated against on the basis of her sexual orientation. She relied on the Convention and the relevant domestic anti-discrimination legislation, and she cited the Court's case-law on the question of discrimination related to sexual orientation.

16. On 29 May 2013 the Constitutional Court dismissed the applicant's constitutional complaint, endorsing the reasoning of the lower bodies. The relevant part of the decision reads:

"8. The Constitutional Court reiterates that discrimination under Article 14 of the Constitution does not have an independent standing for a constitutional complaint but must be submitted in conjunction with another (substantive) constitutional right. Discrimination means difference in the treatment of persons in the same or relevantly similar situations without an objective and reasonable justification. Article 14 of the Constitution contains constitutional guarantee against discrimination on any ground in securing a concrete right.

Although the appellant relied in her constitutional complaint in Article 35 of the Constitution and the related Article 8 of the Convention, the Constitutional Court finds that these provisions are not applicable in the case at issue.

8.1. In the proceedings before it, the Constitutional Court did not find facts or circumstances which would suggest that in the proceedings before [the lower bodies] the appellant was discriminated against on any ground ... Thus her complaint of a violation of Article 14 § 1 of the Constitution, the Constitutional Court finds unfounded.

8.2. The Constitutional Court also notes that the appellant, in the concrete case, did not show that she has used the legal avenue under the Prohibition of Discrimination Act ...

There has therefore been no violation of her constitutional right under Article 14 §§ 1 and 2 of the Constitution.

9. The case-law of the European Court cited in the constitutional complaint is of no relevance for the case at issue since it relates to cases concerning health insurance and inheritance of tenancy rights by same-sex partners living in a stable (*de facto*) relationship."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant domestic law

1. Constitution

17. The relevant provisions of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette nos. 56/1990, 135/1997, 8/1998, 113/2000, 124/2000, 28/2001, 41/2001, 55/2001, 76/2010, 85/2010 and 5/2014) read as follows:

Article 14

"Everyone in the Republic of Croatia shall enjoy rights and freedoms regardless of their race, colour, sex, language, religion, political or other belief, national or social origin, property, birth, education, social status or other characteristics.

All shall be equal before the law."

Article 35

"Everyone has the right to respect for and legal protection of his or her private and family life, dignity, reputation and honour."

2. Constitutional Court Act

18. The relevant part of section 62 of the Constitutional Court Act (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette no. 49/2002) reads as follows:

Section 62

"1. Anyone may lodge a constitutional complaint with the Constitutional Court if he or she deems that an individual act on the part of a State body, a body of local or regional self-government, or a legal person with public authority, concerning his or her rights and obligations or a suspicion or accusation of a criminal deed, has violated his or her human rights or fundamental freedoms or his or her right to local or regional self-government guaranteed by the Constitution (hereinafter "a constitutional right") ...

2. If another legal remedy exists in respect of the violation of the constitutional right [complained of], a constitutional complaint may be lodged only after that remedy has been used."

3. Aliens Act

19. The relevant provisions of the Aliens Act (*Zakon o strancima*, Official Gazette nos. 79/2007 and 36/2009) provide:

Section 43

"(1) Temporary stay is stay of an alien for a period of 90 days ...

(2) An alien who does not need a visa to enter the territory of the Republic of Croatia can stay [on its territory] for a maximum period of 90 days in a period of 6 months, which starts to run from the day of the first entry.

(3) An alien referred to in paragraph 2 of this section who has stayed for 90 days before the expiry of the six-month time-limit, can again enter and stay in the Republic of Croatia after the expiry of the time-limit of 6 months, which starts to run from the day of the first entry."

Section 51

"Temporary residence may be granted for the following purposes:

1. family reunification; ..."

Section 52

"Temporary residence shall be granted to an alien if:

...

5. he or she has justified the purpose of the temporary residence."

Section 56

"(1) Temporary residence for the purpose of family reunification may be granted to an alien who is an immediate family member of:

- a Croatian national;

...

(3) Immediate family members are:

1. spouses,

2. persons who live in an extramarital relationship in accordance with Croatian legislation,

...

(4) Exceptionally to the provision of paragraph 3 of this section, an immediate family member of a Croatian national ... can be also another relative if there are specific personal or serious humanitarian reasons for a family reunification in Croatia."

20. Further amendments to the Aliens Act (Official Gazette nos. 13/2011 and 74/2013), in section 56 § 5, explicitly define the extramarital relationship referred to in that Act as a union between an unmarried woman and man which has lasted for at least three years, or less if a child was born of the union. Section 235 of these amendments provides that the proceedings instituted under the 2007 Aliens Act (see paragraph 19 above) shall be terminated under that Act.

4. Family Act

21. The Family Act (*Obiteljski zakon*, Official Gazette nos. 116/2003, 117/2004, 136/2004, 107/2007, 57/2011, 61/2011 and 25/2013) in its relevant parts provides:

Section 3

"An extramarital relationship [within the meaning of this Act] is a union between an unmarried woman and man which has lasted for at least three years, or less if a child was born of [the union]."

Section 5

"Marriage is a legal union between a woman and a man."

5. Same-Sex Union Act

22. The relevant provisions at the relevant time of the Same-Sex Union Act (*Zakon o istospolnim zajednicama*, Official Gazette no. 116/2003) provided:

Section 2

"Same-sex union within the meaning of this Act is a union between two persons (hereinafter: partners) of the same sex who are not married, or in an extramarital relationship or other same-sex union, which has lasted for at least three years and which is based on the principles of equality of partners, mutual respect and assistance as well as the emotional bonds of partners."

Section 4

"Legal effects of same-sex union are the right to the support of one of the partners and the right to obtain and regulate mutual relations with regard to property as well as the right to mutual assistance."

Section 21

"(1) Any discrimination, direct or indirect, on the basis [of the existence] of same-sex union or homosexual orientation, is prohibited.

..."

23. The Same-Sex Union Act was repealed by the enactment of the Same-Sex Partnership Act (*Zakon o životnom partnerstvu osoba istog spola*, Official Gazette no. 92/2014) that came into force on 1 September 2014, which provides for a possibility of establishing a registered partnership between persons of the same sex. These amendments also introduced the possibility of family reunification for same-sex couples who live in an informal partnership, that is to say a relationship which has lasted for at least three years and otherwise satisfies all the requirements for a registered same-sex partnership. The relevant provision of this Act reads:

Temporary residence for family reunification

Section 73

"... [T]he same-sex partners living in an informal partnership, which has lasted for at least three years, have the right to submit a request for temporary residence in the Republic of Croatia, as provided under the special legislation."

6. Prevention of Discrimination Act

24. The relevant parts of the Prevention of Discrimination Act (*Zakon o suzbijanju diskriminacije*, Official Gazette no. 85/2008) provide:

Section 1

"(1) This Act ensures protection and promotion of equality as the highest value of the constitutional order of the Republic of Croatia; creates conditions for equal opportunities and regulates protection against discrimination on the basis of race or ethnic origin or skin colour, gender, language, religion, political or other conviction, national or social origin, state of wealth, membership of a trade union, education, social status, marital or family status, age, health, disability, genetic inheritance, gender identity, expression or sexual orientation.

(2) Discrimination within the meaning of this Act means putting any person in a disadvantageous position on any of the grounds under subsection 1 of this section, as well as his or her close relatives.

..."

Section 8

"This Act shall be applied in respect of all State bodies ... legal entities and natural persons ..."

Section 16

"Anyone who considers that, owing to discrimination, any of his or her rights has been violated may seek protection of that right in proceedings in which the determination of that right is the main issue, and may also seek protection in separate proceedings under section 17 of this Act."

Section 17

"(1) A person who claims that he or she has been a victim of discrimination in accordance with the provisions of this Act may bring a claim and seek:

(1) a ruling that the defendant has violated the plaintiff's right to equal treatment or that an act or omission by the defendant may lead to the violation of the plaintiff's right to equal treatment (claim for an acknowledgment of discrimination);

(2) a ban on (the defendant's) undertaking acts which violate or may violate the plaintiff's right to equal treatment or an order for measures aimed at removing discrimination or its consequences to be taken (claim for a ban or for removal of discrimination);

(3) compensation for pecuniary and non-pecuniary damage caused by the violation of the rights protected by this Act (claim for damages);

(4) an order for a judgment finding a violation of the right to equal treatment to be published in the media at the defendant's expense."

25. In 2009 the Office for Human Rights of the Government of Croatia (*Ured za ljudska prava Vlade Republike Hrvatske*) published a "Manual on the Application of the Prevention of Discrimination Act" (*Vodič uz Zakon o suzbijanju diskriminacije*; hereinafter: the "Manual"). The Manual explains, *inter alia*, that the Prevention of Discrimination Act provides two alternative avenues which an individual can pursue, as provided under section 16 of that Act. Accordingly, an individual may raise his or her discrimination complaint in the proceedings concerning the main subject matter of a dispute, or he or she may opt for separate civil proceedings, as provided under section 17 of the Act.

B. Relevant practice

26. On 9 November 2010, in the case no. U-III-1097/2009, the Constitutional Court declared a constitutional complaint alleging discrimination by a decision of the Parliament on the basis of the political affiliation of a deputy inadmissible for non-exhaustion of domestic remedies. The Constitutional Court found that the appellant had failed to pursue the relevant administrative remedies and the remedies provided under the Prevention of Discrimination Act. It declined, however, to determine what the relationship between several possible avenues in a case concerning allegations of discrimination was on the ground that it was primarily for the competent courts to determine that matter.

27. The Government also provided a first-instance judgment of the Varaždin Municipal Court (*Općinski sud u Varaždinu*), no. P-3153/10-89 of 12 July 2012, by which a civil action of D.K. against the Zagreb University, Varaždin Faculty of Organisation and Informatics (*Sveučilište u Zagrebu, Fakultet organizacije i informatike Varaždin*), alleging discrimination based on his sexual orientation, has been partially accepted. By this judgment, the Varaždin Municipal Court established, *inter alia*, that D.K. had suffered discrimination related to his employment status on the basis of his sexual orientation and ordered the defendant not to undertake any acts which could prevent his promotion on the basis of his sexual orientation.

III. RELEVANT EUROPEAN AND INTERNATIONAL MATERIAL

A. United Nations

1. International Covenant on Civil and Political Rights

28. The relevant provision of the International Covenant on Civil and Political Rights of 16 December 1966 reads:

Article 26

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

2. Practice of the United Nations Human Rights Committee

29. In the case *X v. Colombia*, CCPR/C/89/D/1361/2005, on 30 March 2007 the United Nations Human Rights Committee reaffirmed its case-law according to which Article 26 of the International Covenant on Civil and Political Rights comprises also discrimination based on sexual orientation.

B. Council of Europe

1. Parliamentary Assembly

30. In its Recommendation 924 (1981) on discrimination against homosexuals of 1 October 1981, the Parliamentary Assembly of the Council of Europe (PACE) criticised various forms of discrimination against homosexuals in certain member States of the Council of Europe.

31. In the Recommendation 1470 (2000) on the situation of gays and lesbians and their partners in respect of asylum and immigration in the member States of the Council of Europe of 30 June 2000, PACE observed the following:

"2. The Assembly is concerned by the fact that immigration policies in most Council of Europe member states discriminate against lesbians and gays. In particular, the majority of them do not recognise persecution for sexual orientation as a valid ground for granting asylum, nor do they provide any form of residence rights to the foreign partner in a bi-national same-sex partnership.

...

7. Therefore the Assembly recommends that the Committee of Ministers:

...

ii. urge the member states:

...

e. to take such measures as are necessary to ensure that bi-national lesbian and gay couples are accorded the same residence rights as bi-national heterosexual couples; ..."

32. In Recommendation 1474 (2000) on the situation of lesbians and gays in Council of Europe member States of 26 September 2000, PACE called on member States, among other things, to include sexual orientation among the prohibited grounds for discrimination in their national legislation.

33. It also reiterated the need to adopt and implement anti-discrimination legislation, including sexual orientation and gender identity among the prohibited grounds for discrimination in Resolution 1728 (2010) on discrimination on the basis of sexual orientation and gender identity of 29 April 2010.

2. Committee of Ministers

34. The relevant parts of Recommendation CM/Rec(2010)5 of the Committee of Ministers to member States on measures to combat discrimination on grounds of sexual orientation or gender identity of 31 March 2010 read:

> "Recommends that member states:
>
> ...
>
> 2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;
>
> ...
>
> **IV. Right to respect for private and family life**
>
> ...
>
> 23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor's pension benefits and tenancy rights.
>
> 24. Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation."

C. European Union

1. Charter of Fundamental Rights

35. The relevant provisions of the Charter of Fundamental Rights of the European Union (2000/C 364/01) read:

> **Article 7**
>
> **Respect for private and family life**
>
> "Everyone has the right to respect for his or her private and family life, home and communications."

Article 20

Equality before the law

"Everyone is equal before the law."

Article 21

Non-discrimination

1. Any discrimination based on any ground such as ... sexual orientation shall be prohibited.

..."

2. Directives 2003/86/EC and 2004/38/EC

36. Several Directives of the European Union, although not directly applicable, are also of interest in the present case. The Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification lays down the conditions for the exercise of the right to family reunification by third country nationals residing lawfully on the territory of a Member State.

In Recital 5 it calls upon the Member States to give effect to its provisions without discrimination on the basis of, *inter alia*, sexual orientation.

In the relevant part of Article 4, under the heading "Family Members", it provides the following:

> "(3) The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the unmarried partner, being a third country national, with whom the sponsor is in a duly attested stable long-term relationship, or of a third country national who is bound to the sponsor by a registered partnership in accordance with Article 5(2) ..."

In addition, the relevant part of Article 5 the same Directive provides:

> "When examining an application concerning the unmarried partner of the sponsor, Member States shall consider, as evidence of the family relationship, factors such as a common child, previous cohabitation, registration of the partnership and any other reliable means of proof."

37. The Directive 2004/38/EC of the European Parliament and Council of 29 April 2004 concerns the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

Recital 31 of this Directive requires that its provisions be implemented without discrimination between the beneficiaries on grounds of, *inter alia*, sexual orientation.

In Article 2 the term "family members" is defined in relation to, among other things, a partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if

the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 14 TAKEN IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

38. The applicant complained that when applying for a residence permit in Croatia she had been discriminated against on the grounds of her sexual orientation, contrary to Article 14 read in conjunction with Article 8 of the Convention, which read as follows:

Article 8

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

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

Article 14

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

A. Admissibility

1. The parties' arguments

39. The Government argued that the applicant had failed to avail herself of the opportunity of instituting civil proceedings under section 17 of the Prevention of Discrimination Act, which could have led, in particular, to an acknowledgment of discrimination, and/or ordering of removal of discrimination and its consequences, and/or an award of damages, and/or publication of the findings in the media. In the Government's view, the Prevention of Discrimination Act provided for effective domestic remedies, which must have been known to the applicant, who was duly represented by lawyers. The effectiveness of the legal remedy under the Prevention of Discrimination Act followed from the practice of the domestic courts and had moreover been recognised by the Constitutional Court, which had

therefore declared the applicant's constitutional complaint inadmissible for non-exhaustion of domestic remedies. In addition, the Government referred to the fact that the Prevention of Discrimination Act also provided an alternative avenue under section 16, allowing an individual to raise his or her discrimination complaint as a preliminary issue in the main proceedings, but they considered that the applicant had failed to raise that matter properly in the administrative proceedings concerning her request for family reunification.

40. The applicant submitted that section 16 of the Prevention of Discrimination Act provided two alternative avenues through which an individual could seek protection from discrimination: firstly, by raising the matter in the main proceedings concerning his or her rights, or, alternatively, by lodging a civil action in a separate set of proceedings. In these circumstances she had sought protection through the administrative proceedings concerning her request for family reunification and she was therefore not required to use another remedy by lodging a separate civil action concerning the same discrimination complaint.

2. The Court's assessment

41. The Court reiterates that under Article 35 § 1 of the Convention, it may only deal with an application after all domestic remedies have been exhausted. The purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, for example, *Mifsud v. France* (dec.) [GC], no. 57220/00, § 15, ECHR 2002-VIII). The obligation to exhaust domestic remedies requires an applicant to make normal use of remedies which are effective, sufficient and accessible in respect of his Convention grievances. To be effective, a remedy must be capable of resolving directly the impugned state of affairs (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004).

42. The rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism. At the same time it requires in principle that the complaints intended to be made subsequently at international level should have been aired before domestic authorities, at least in substance and in compliance with the formal requirements laid down in domestic law (see *Azinas v. Cyprus* [GC], no. 56679/00, § 38, ECHR 2004-III; *Melnik v. Ukraine*, no. 72286/01, § 67, 28 March 2006; *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 91, 29 November 2007; and *Dvořáček and Dvořáčková v. Slovakia*, no. 30754/04, § 54, 28 July 2009).

43. However, in the event of there being a number of domestic remedies which an individual can pursue, that person is entitled to choose a remedy which addresses his or her essential grievance. In other words, when a remedy has been pursued, use of another remedy which has essentially the

same objective is not required (see *T.W. v. Malta* [GC], no. 25644/94, § 34, 29 April 1999; *Moreira Barbosa v. Portugal* (dec.), no. 65681/01, ECHR 2004-V; and *Jeličić v. Bosnia and Herzegovina* (dec.), no. 41183/02, 15 November 2005; and *Jasinskis v. Latvia*, no. 45744/08, § 50, 21 December 2010).

44. The Court notes at the outset that there is no dispute between the parties that the Prevention of Discrimination Act in section 16 provides two alternative avenues through which an individual can seek protection from discrimination. In particular, an individual may raise his or her discrimination complaint in the proceedings concerning the main subject matter of a dispute, or he or she may opt for separate civil proceedings, as provided under section 17 of that Act (see paragraphs 24-25 above).

45. In the case at issue the applicant contended during the administrative proceedings that she had been discriminated against on the basis of her sexual orientation in obtaining a residence permit in Croatia. She explicitly relied on the domestic anti-discrimination legislation, including the Prevention of Discrimination Act (see paragraph 11 above). Moreover, in her remedies before the competent domestic courts, including the Constitutional Court, the applicant relied on the Convention and the Court's case-law on the matter of discrimination related to sexual orientation (see paragraphs 13 and 15 above).

46. In these circumstances, the Court finds that the applicant sufficiently raised her discrimination complaint before the competent domestic authorities. She was therefore not required to pursue another remedy under the Prevention of Discrimination Act with essentially the same objective in order to meet the requirements of Article 35 § 1 of the Convention (see paragraph 43 above).

47. In any case, the Court notes, contrary to what the Government have asserted, that the Constitutional Court did not declare the applicant's constitutional complaint inadmissible for non-exhaustion of domestic remedies, as it was its practice in other cases concerning discrimination complaints where, according to it, the appellants had not properly exhausted remedies before the lower domestic authorities (see paragraph 26 above; and compare *Bjedov v. Croatia*, no. 42150/09, § 48, 29 May 2012; and *Zrilić v. Croatia*, no. 46726/11, § 49, 3 October 2013). The Constitutional Court rather found that there had been no violation of the applicant's constitutional right to the protection from discrimination. Accordingly, although the reasoning of the Constitutional Court's decision is somewhat confusing (see paragraph 16 above; paragraphs 8.1-8.2 of the Constitutional Court's decision), in that it is not clear what relevance it attached to the applicant's failure to use a separate civil action under the Prevention of Discrimination Act, the Court has no reason to doubt the applicant's proper use of remedies before the competent domestic authorities, including the Constitutional Court (see paragraphs 44-46 above).

48. The Court therefore rejects the Government's objection. It also notes that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

49. The applicant submitted that the facts of her case should be examined under the concepts of private and family life under Article 8 of the Convention. In particular, she stressed that it clearly followed from the Court's case-law that a stable *de facto* relationship between same-sex couples should be considered as family life under that provision. In her case, she was in a stable relationship with D.B. with whom she maintained a relationship by constant visits for the periods of three months in which she was allowed to stay in Croatia without a residence permit.

50. The applicant further contended that very weighty and convincing reasons were necessary when justifying discrimination on the ground of sexual orientation. In the case at issue no such reasons existed, as it was unreasonable to allow for the possibility of obtaining a residence permit for unmarried different-sex couples while excluding such a possibility for same-sex couples. Any possible argument concerning the protection of family in the traditional sense was inapplicable in this context since there had been various other less restrictive means for achieving that aim. The applicant also stressed that her request for a residence permit on the ground of family reunification with her partner had been dismissed at the outset since the relevant domestic law *per se* excluded the possibility of family reunification of same-sex couples. This, in her view, amounted to a direct discrimination contrary to the requirements of the Convention.

(b) The Government

51. The Government pointed out that it was within the State's margin of appreciation to decide how to construe and treat the concepts of family and private life of individuals who entered into a relationship, in particular when it concerned same-sex couples. Moreover, the State had a wide margin of appreciation in matters of immigration. In the Government's view, in the case at issue the applicant had failed to demonstrate that she had had family life with D.B. In particular, she had not lived with D.B. or otherwise demonstrated their mutual commitment to a family life. The fact that she wanted to move and live with D.B. and to start their common business could not amount to the recognition of a *de facto* family life. Moreover, the Government did not wish to speculate as to whether the matter concerned

the applicant's private life, since the right to a residence permit in Croatia could not be considered under the applicant's right to respect for her private life. In any case, the Aliens Act clearly listed instances in which family reunification could be sought and there had therefore been no reason for the applicant to consider that her situation could fall within these requirements.

52. The Government also considered that the applicant was not in a comparable situation with unmarried different-sex couples given that the relevant domestic law defined extramarital relationship of different-sex couples and same-sex couples differently. Moreover, even if the Aliens Act allowed for a family reunification of unmarried different-sex couples, the applicant would not satisfy the requirements of the relevant domestic law as at the moment when she had submitted her request for family reunification she had not been in a relationship with D.B. for a period of three years. In any case, there was nothing under the Convention imposing an obligation on the State to allow for family reunification, in particular in matters concerning same-sex couples.

2. The Court's assessment

(a) General principles

53. The Court has consistently held that Article 14 complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded thereby. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of them. The prohibition of discrimination enshrined in Article 14 thus extends beyond the enjoyment of the rights and freedoms which the Convention and the Protocols thereto require each State to guarantee. It applies also to those additional rights, falling within the general scope of any Convention Article, for which the State has voluntarily decided to provide (see, among many other authorities, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 71, Series A no. 94; and *E.B. v. France* [GC], no. 43546/02, §§ 47-48, 22 January 2008; *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 72, ECHR 2013 (extracts); and *Genovese v. Malta*, no. 53124/09, § 32, 11 October 2011).

54. The Court has established in its case-law that only differences in treatment based on an identifiable characteristic, or status, are capable of amounting to discrimination within the meaning of Article 14 (see *Eweida and Others v. the United Kingdom*, no. 48420/10, § 86, 15 January 2013).

55. Generally, in order for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous, or relevantly similar, situations (see *X and Others v. Austria* [GC], no. 19010/07, § 98,

19 February 2013). However, not every difference in treatment will amount to a violation of Article 14. A difference of treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The notion of discrimination within the meaning of Article 14 also includes cases where a person or group is treated, without proper justification, less favourably than another, even though the more favourable treatment is not called for by the Convention (see *Abdulaziz, Cabales and Balkandali*, cited above, § 82; *Vallianatos and Others*, cited above, § 76.

56. A general policy or measure that has disproportionately prejudicial effects on a particular group may be considered discriminatory even where it is not specifically aimed at that group and there is no discriminatory intent This is only the case, however, if such policy or measure has no "objective and reasonable" justification (see, among other authorities, *S.A.S. v. France* [GC], no. 43835/11, § 161, ECHR 2014 (extracts)).

57. The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment (see *Burden v. the United Kingdom* [GC], no. 13378/05, § 60, ECHR 2008; *X and Others v. Austria*, cited above, § 98; and *Vallianatos and Others*, cited above, § 76). The scope of the margin of appreciation will vary according to the circumstances, the subject matter and the background (see *Stummer v. Austria* [GC], no. 37452/02, § 88, ECHR 2011; and *Hode and Abdi v. the United Kingdom*, no. 22341/09, § 52, 6 November 2012).

58. On the one hand, a wide margin is usually allowed to the State under the Convention when it comes to matters of immigration. In particular, a State is entitled, as a matter of well-established international law and subject to its treaty obligations, to control the entry of aliens into its territory and their residence there. The Convention does not guarantee the right of a foreign national to enter or to reside in a particular country (see, amongst many others, *Abdulaziz, Cabales and Balkandali*, cited above, § 67; and *Jeunesse v. the Netherlands* [GC], no. 12738/10, § 100, 3 October 2014).

59. On the other hand, the Court has repeatedly held that, just like differences based on sex, differences based on sexual orientation require "particularly convincing and weighty reasons" by way of justification (see, for example, *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 90, ECHR 1999-VI; *Karner v. Austria*, no. 40016/98, §§ 37 and 42, ECHR 2003-IX; and *X and Others v. Austria*, cited above, § 99). Where a difference in treatment is based on sex or sexual orientation the State's margin of appreciation is narrow (see *Karner*, cited above, § 41, and *Kozak v. Poland*, no. 13102/02, § 92, 2 March 2010). Differences based solely on considerations of sexual orientation are unacceptable under the Convention (see *Salgueiro da Silva Mouta v. Portugal*, no. 33290/96, § 36, ECHR

1999-IX; *E.B. v. France*, cited above, §§ 93 and 96; *X and Others v. Austria*, cited above, § 99; and *Vallianatos and Others*, cited above, § 77).

60. In any case, however, irrespective of the scope of the State's margin of appreciation the final decision as to the observance of the Convention's requirements rests with the Court (see, *inter alia*, *Konstantin Markin v. Russia* [GC], no. 30078/06, § 126, ECHR 2012 (extracts)). As to the burden of proof in relation to Article 14 of the Convention, the Court has held that once the applicant has shown a difference in treatment, it is for the Government to show that it was justified (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 177, ECHR 2007-IV; *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 389, ECHR 2012 (extracts); and *Vallianatos and Others*, cited above, § 85).

(b) Application of these principles to the present case

(i) Whether the facts underlying the complaint fall within the ambit of Article 8

61. The Court notes at the outset that there is no doubt that the relationship of a same-sex couple like the applicants' falls within the notion of "private life" within the meaning of Article 8 (see, for example, *Mata Estevez v. Spain* (dec.), no. 56501/00, ECHR 2001-VI). Indeed, the Court has previously held that the notion of "private life" within the meaning of Article 8 of the Convention is a broad concept which encompasses, *inter alia*, the right to establish and develop relationships with other human beings (see *Niemietz v. Germany*, 16 December 1992, § 29, Series A no. 251-B), the right to "personal development" (see *Bensaid v. the United Kingdom*, no. 44599/98, § 47, ECHR 2001-I) or the right to self-determination as such (see *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002‑III). It accordingly also encompasses elements such as gender identification, sexual orientation and sexual life, which fall within the personal sphere protected by Article 8 (see *E.B. v. France*, cited above, § 43).

62. However, in the light of the parties' comments the Court finds it appropriate to address the issue whether the applicant's relationship with D.B. also falls within the scope of "family life".

63. In this connection the Court reiterates its established case-law in respect of different-sex couples, namely that the notion of "family" under this provision is not confined to marriage-based relationships and may encompass other *de facto* "family" ties where the parties are living together out of wedlock (see *Schalk and Kopf v. Austria*, no. 30141/04, § 91, ECHR 2010). In contrast, the Court's case-law has for a long time only accepted that the emotional and sexual relationship of a same-sex couple constitutes "private life" but has not found that it constitutes "family life", even where a long-term relationship of cohabiting partners was at stake. In coming to that conclusion, the Court observed that despite the growing tendency in a

number of European States towards the legal and judicial recognition of stable *de facto* same-sex partnerships, given the existence of little common ground between the Contracting States, this was an area in which they still enjoyed a wide margin of appreciation (see *Mata Estevez*, cited above, with further references).

64. However, in *P.B. and J.S. v. Austria* and *Schalk and Kopf* the Court noted that since 2001, when the decision in *Mata Estevez* was given, a rapid evolution of social attitudes towards same-sex couples has taken place in many member States. Since then, a considerable number of member States have afforded legal recognition to same-sex couples. Certain provisions of European Union law also reflect a growing tendency to include same-sex couples in the notion of "family" (see paragraphs 36-37 above). In view of this evolution, the Court considered it artificial to maintain the view that, in contrast to a different-sex couple, a same-sex couple could not enjoy "family life" for the purposes of Article 8. It therefore held that the relationship of a cohabiting same-sex couple living in a stable *de facto* partnership fell within the notion of "family life", just as the relationship of a different-sex couple in the same situation would (see *P.B. and J.S. v. Austria*, no. 18984/02, §§ 27-30, 22 July 2010; and *Schalk and Kopf*, cited above, §§ 91-94).

65. The Court further explained in *Vallianatos* that there can be no basis for drawing a distinction between stable same-sex couples who live together and those who – for professional and social reasons – do not, since the fact of not cohabiting does not deprive the couples concerned of the stability which brings them within the scope of family life within the meaning of Article 8 (see *Vallianatos and Others*, cited above, § 73).

66. In the case at hand the Court notes that it is undisputed between the parties that the applicant has maintained a stable relationship with D.B. since October 2009. In particular, she regularly travels to Croatia and sometimes spends three months living together with D.B. in Sisak, as that is the only possibility open to her to maintain a relationship with D.B. due to the relevant immigration restrictions (see paragraphs 8-9 above; and paragraph 19 above, section 43 of the Aliens Act). It should be also noted that they expressed a serious intention of living together in the same household in Croatia, and moreover starting a common business, in respect of which they instituted and duly pursued the relevant proceedings.

67. In these circumstances, the Court finds that the fact of not cohabiting with D.B. for the objectively induced reason related to the State's impugned immigration policy, does not deprive the applicant's relationship of the stability which brings her situation within the scope of family life within the meaning of Article 8 of the Convention.

68. The Court therefore concludes that the facts of the present case fall within the notion of "private life" as well as "family life" within the

meaning of Article 8. Consequently, Article 14 taken in conjunction with Article 8 of the Convention applies.

(ii) Whether there was a difference of treatment between persons in relevantly similar positions

69. The Court starts by observing that it has constantly held that sexual orientation is a concept covered by Article 14 (see, for example, *E.B. v. France*, cited above, § 50; and *Vallianatos and Others*, cited above, § 77).

70. It further notes that the case at issue concerns the applicant's complaint that she was discriminated against on the grounds of her sexual orientation in obtaining a residence permit for family reunification with her partner D.B. in comparison to unmarried different-sex couples. In particular, whereas the possibility of obtaining a residence permit for family reunification was open to unmarried different-sex couples, it was excluded for same-sex couples since their relationship was not covered by the term "family member" under section 56 § 3 of the Aliens Act and the term "other relative" under paragraph 4 of the same section of the Aliens Act (see paragraphs 14 and 19 above).

71. Thus, the initial question to be addressed by the Court is whether the applicant's situation is comparable to that of unmarried different-sex couples applying for a residence permit for family reunification in Croatia. In making this assessment, the Court will bear in mind that in proceedings originating in an individual application it has to confine itself, as far as possible, to an examination of the concrete case before it (see, for example, *Schalk and Kopf*, cited above, § 103). Having said so, and in view of the applicant's specific complaint, the Court considers that there is no need for it to examine whether the applicant was in a situation which is relevantly similar to that of a spouse in a married different-sex couple applying for family reunification.

72. The Court observes that in the Croatian legal system an extramarital relationship is defined as an union between an unmarried woman and man which has lasted for at least three years, or less if a child was born of the union. At the relevant time this definition was provided under the Family Act whereas the applicable Aliens Act, in defining the scope of the term "family" under section 56, only made reference to an "extramarital relationship" (see paragraphs 19-20 above). At the same time, same-sex union was defined as a union between two persons of the same sex who are not married, or in an extramarital relationship or other same-sex union, which has lasted for at least three years and which is based on the principles of equality of partners, mutual respect and assistance as well as the emotional bonds of partners (see paragraph 22 above). The Aliens Act made no reference to a same-sex union with regard to the possibility of obtaining a residence permit for family reunification (see paragraph 19 above).

73. It follows from the above that by recognising both extramarital relationships of different-sex couples and same-sex couples the Croatian legal system recognised in general the possibility that both categories of couples are capable of forming stable committed relationships (see, in this respect, *Schalk and Kopf*, cited above, 99; and *Vallianatos and Others*, cited above, § 78). In any case, a partner in a same-sex relationship, as the applicant, who applied for a residence permit for family reunification so he or she could pursue the intended family life in Croatia is in a comparable situation to a partner in a different-sex extramarital relationship as regards the same intended manner of making his or her family life possible.

74. The Court notes, however, that the relevant provisions of the Aliens Act expressly reserved the possibility of applying for a residence permit for family reunification to different-sex couples, married or living in an extramarital relationship (see paragraphs 19 and 20 above). Accordingly, by tacitly excluding same-sex couples from its scope, the Aliens Act in question introduced a difference in treatment based on the sexual orientation of the persons concerned (compare *Vallianatos and Others*, cited above, § 79; and paragraph 23 above, concerning the subsequent changes in the relevant legislation).

75. With regard to the Government's argument that the applicant was not in a comparable situation to different-sex couples living in an extramarital relationship given that she had not been in a relationship with D.B. for a period of three years, the Court firstly notes that when dismissing the applicant's action the Administrative Court did not carry out any investigation into the circumstances of the case nor did it deal with the question of the relevance of the period in which the applicant was in a relationship with D.B. for its decision concerning her request for family reunification. Instead, it relied on the legal impossibility argument alone, finding that it was not possible under the limitations imposed by the Aliens Act to grant the applicant's request (see paragraph 14 above). It also follows from the decision of the Ministry that the legal impossibility of obtaining a residence permit for family reunification by a partner in a same-sex relationship was at the centre of the domestic authorities' considerations (see paragraph 12 above; and compare *X and Others v. Austria*, cited above, §§ 118-119 and 123).

76. Moreover, the Court notes that already by the time the applicant's case reached the stage of the proceedings before the Administrative Court, the applicant's relationship with D.B. had lasted more than three years (see paragraphs 9 and 14 above). Nevertheless, as already noted above, the Administrative Court did not consider it pertinent to examine the relevant factual aspects of the applicant's case as it relied on the legal impossibility of obtaining a residence permit for family reunification by a partner in a same-sex relationship. This accordingly prevents the Court from speculating what would be the possible Administrative Court's decision if it had

considered that the family reunification of same-sex couples was possible under the relevant domestic law.

77. The Court therefore dismisses the Government's argument and finds that the applicant was affected by the difference in treatment based on sexual orientation introduced by the Aliens Act (see paragraph 74 above).

78. It remains to be seen whether this had an objective and reasonable justification.

(iii) Whether there was objective and reasonable justification

79. The Court notes at the outset that the right of an alien to enter or to settle in a particular country is not guaranteed by the Convention. Where immigration is concerned, Article 8 or any other Convention provision cannot be considered to impose on a State a general obligation to, for instance, authorise family reunion in its territory (see *Jeunesse*, cited above, § 107; and *Gül v. Switzerland*, 19 February 1996, § 38, *Reports* 1996-I; and *Kiyutin v. Russia*, no. 2700/10, § 38, ECHR 2011). Whereas the applicant does not seem to contest this, the Government rely on it as their central argument (see paragraph 51 above).

80. However, the present case concerns compliance with Article 14 in conjunction with Article 8 of the Convention, with the result that immigration control measures, which may be found to be compatible with Article 8 § 2, including the legitimate aim requirement, may nevertheless amount to unjustified discrimination in breach of Article 14 read in conjunction with Article 8. Indeed, it is the Court's well-established case-law that although Article 8 does not include a right to settle in a particular country or a right to obtain a residence permit, the State must nevertheless exercise its immigration policies in a manner which is compatible with a foreign national's human rights, in particular the right to respect for his or her private or family life and the right not to be subject to discrimination (see *Abdulaziz, Cabales and Balkandali*, cited above, §§ 59-60; *Kiyutin*, cited above, § 53). Even in cases in which the State that has gone beyond its obligations under Article 8 in creating a right – a possibility open to it under Article 53 of the Convention – it cannot, in the application of that right, take discriminatory measures within the meaning of Article 14 (see, for instance, *E.B. v. France*, cited above, § 49; *P.B. and J.S. v. Austria*, cited above, § 34; and *X and Others v. Austria*, cited above, §§ 135-136).

81. Accordingly, once the Court has found a difference in treatment, as the one created in the case at issue by the Aliens Act (see paragraph 77 above), it is then for the respondent Government to show that the difference in treatment could be justified (see paragraph 60 above). Such justification must be objective and reasonable or, in other words, it must pursue a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see paragraph 55 above).

82. In cases in which the margin of appreciation afforded to States is narrow, as is the position where there is a difference in treatment based on sex or sexual orientation (see paragraph 59 above), the principle of proportionality does not merely require the measure chosen to be suitable in principle for achievement of the aim sought. It must also be shown that it was necessary, in order to achieve that aim, to exclude certain categories of people – in this instance persons in a same-sex relationship – from the scope of application of the relevant domestic provisions at issue (see *Vallianatos and Others*, cited above, § 85). This equality requirement holds true in the immigration cases as well where States are otherwise allowed a wide margin of appreciation (see paragraph 58 above).

83. The Court observes that the competent domestic authorities did not advance any such "justification", nor did the Government adduce any particularly convincing and weighty reasons to justify the difference in treatment between same-sex and different-sex couples in obtaining the family reunification (see *X and Others v. Austria*, cited above, § 151; and *Karner*, cited above, § 41).

84. Instead, the relevant provisions of the Aliens Act provided for a blanket exclusion of persons living in a same-sex relationship from the possibility of obtaining family reunification, which cannot be considered compatible with the standards under the Convention (compare *Kozak*, cited above, § 99). Indeed, as already noted above, a difference in treatment based solely or decisively on considerations regarding the applicant's sexual orientation would amount to a distinction which is not acceptable under the Convention (see *Salgueiro da Silva Mouta*, cited above, § 36; and *E.B. v. France*, cited above, §§ 93-96).

85. Lastly, the Court would emphasise once more that the present case does not concern the question whether the applicant's family reunification request should have been granted in the circumstances of the case. It concerns the question whether the applicants were discriminated against on account of the fact that the domestic authorities considered that such a possibility was in any case legally impossible. Accordingly, in light of the reasons adduced above (see paragraphs 79-84 above), the Court considers that the difference of treatment of the applicant's situation in question is incompatible with the provisions of Article 14 taken in conjunction with Article 8 of the Convention.

86. The Court therefore finds that there has been a violation of Article 14 taken in conjunction with Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

87. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

88. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

89. The Government considered this claim excessive, unfounded and unsubstantiated.

90. The Court considers that the applicant must have sustained non-pecuniary damage which is not sufficiently compensated by the finding of a violation. Ruling on an equitable basis, it awards her the amount claimed in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

91. The applicant also claimed EUR 5,690 for the costs and expenses incurred before the domestic authorities and for those incurred before the Court.

92. The Government contested this claim as unfounded and unsubstantiated.

93. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum claimed covering costs under all heads, plus any tax that may be chargeable on this amount.

C. Default interest

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

FOR THESE REASONS, THE COUR, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 14 taken in conjunction with Article 8 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Croatian kunas (HRK), at the rate applicable at the date of settlement:
      (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 5,690 (five thousand six hundred and ninety euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 23 February 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Deputy Registrar

Işil Karakaş
President