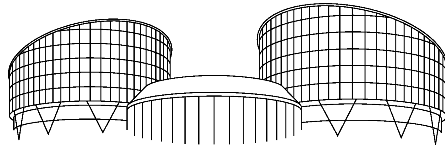

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF UDOVIČIĆ v. CROATIA

(Application no. 27310/09)

JUDGMENT

STRASBOURG

24 April 2014

FINAL

24/07/2014

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Udovičić v. Croatia,

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

Isabelle Berro-Lefèvre, *President,*
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 1 April 2014,

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

PROCEDURE

1. The case originated in an application (no. 27310/09) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Croatian national, Ms Ljubica Udovičić ("the applicant"), on 29 April 2009.

2. The applicant was represented by Mr B. Udovičić, a lawyer practising in Križevci. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. The applicant alleged a breach of her right to respect for her private life and home, her right to peaceful enjoyment of possessions and the right to a fair trial, under Article 8 of the Convention, Article 1 of Protocol No. 1 and Article 6 § 1 of the Convention respectively.

4. On 14 November 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1950 and lives in Cubinec.

6. Part of the house where the applicant has been living since 1991 with her family is occupied by a bar, and for a certain period of time a shop (see paragraph 43 below), run by company O-P. and its predecessor company F. (hereinafter "the company"), since August 2002.

7. The applicant is the owner of 59.63% of the house, while the company owns the remainder of the house with a share of 40.37%.

8. The bar is located on the ground floor of the house, below the applicant's flat. The applicant also owns a flat on the ground floor adjacent to the bar.

A. Administrative proceedings concerning the construction work carried out by the company

9. In August 2002 the company began reconstruction work on its premises in order to open a bar and a shop.

10. On 21 August 2002 a building inspector (*građevinski inspektor*), acting on a complaint by the applicant, found that the reconstruction carried out by the company had not required any additional planning permission or authorisation.

11. The applicant lodged an appeal against the decision of the building inspector with the Ministry of Ecology, Spatial Planning and Construction (*Ministarstvo zaštite okoliša, prostornog uređenja i graditeljstva*, hereinafter "the Ministry of Construction"), arguing that the company had demolished one of the load-bearing walls and had made a hole in the façade.

12. On 28 June 2004 the Ministry of Construction allowed the applicant's appeal and remitted the case to the building inspector on the grounds that he had failed to establish all the relevant facts.

13. On 7 June 2005 the building inspector found that the company had carried out the construction within the scope defined by the existing planning permissions.

14. The applicant again appealed to the Ministry of Construction, arguing that she had not had an opportunity to participate in the proceedings and that the findings of the building inspector were erroneous.

15. On 6 February 2006 the Ministry of Construction remitted the case to the building inspector on the grounds that he had failed to take into account the obvious modifications to the building, in particular the demolition of the load-bearing wall and fissures on the surrounding walls.

16. On 4 June 2007 the construction inspector ordered the applicant and the company to remove certain walls, a balcony, staircases and part of a rooftop, considering that they had been constructed without the necessary planning permissions.

17. The applicant appealed against that decision to the Ministry of Construction and on 26 October 2007 the Ministry dismissed her appeal.

18. On an unspecified date in 2008 the applicant lodged an administrative action in the Administrative Court (*Upravni sud Republike Hrvatske*) challenging the decisions of the building inspector and the Ministry of Construction.

19. On 3 November 2011 the Administrative Court quashed the decisions of the administrative bodies and ordered that the case be re-examined on the grounds that the relevant facts had not been correctly established.

20. The administrative proceedings are still pending.

B. Administrative proceedings concerning the company's request for operating licences

21. In August 2002 the company applied to the Koprivničko-Križevačka County State Administration Office (*Ured državne uprave u Koprivničko-križevačkoj županiji,* hereinafter "the County Office") for an operating licence to run a bar and a shop.

22. An administrative commission, established to examine whether the premises in which the company intended to run a bar met the necessary operating requirements, noted in its report of 27 August 2002 that those requirements had been met. It relied on an expert report provided by company Z. which, without measuring the noise in the applicant's flat, because she allegedly would not allow such measurements to be taken in her flat, found that the necessary measures of noise insulation had been put in place.

23. On 30 August 2002 the County Office granted the company a licence to run a bar.

24. The applicant complained to the County Office about that decision, arguing that she had not been allowed to participate in the administrative proceedings. She requested that the proceedings be reopened.

25. On 18 June 2003 the County Office dismissed the applicant's complaint as ill-founded.

26. The applicant lodged an appeal against that decision with the Ministry of Tourism (*Ministarstvo turizma*) and on 17 September 2003 the Ministry quashed the decisions of the County Office and ordered that the applicant be allowed to participate in the proceedings. This decision was later, on 6 September 2007, upheld by the Administrative Court.

27. On 22 February 2004 the County Office dismissed the applicant's request for reopening of the administrative proceedings, and this decision was upheld by the Ministry of Tourism on 22 April 2004. The Ministry held that the applicant had been allowed access to all the relevant documents from the case file, and that therefore it was not necessary to reopen the proceedings.

28. On an unspecified date in 2004 the applicant lodged an administrative action with the Administrative Court. She contended that noise measurements had never been taken in her flat and that the decisions of the lower administrative bodies had numerous substantive and procedural flaws.

29. In October 2005, after company O-P. succeeded to the business activity of company F., it applied to the County Office for operating licences to run a bar and a shop.

30. The company submitted a report drawn up by company E. of noise measurements taken on 5 October 2005. The report measured the level of noise during the night (after 10 p.m.) in the bar, the parking area and the entrance to the applicant's flat located on the first floor. In assessing the maximum permitted noise levels, this report took into account that the house was situated near a road and considered the applicant's house to fall within zone 4 under section 5 of the by-law on the maximum permitted levels of noise in areas where people live and work (*Pravilnik o najvišim dopuštenim razinama buke u sredinama u kojima ljudi rade i borave*, hereinafter "the by-law") relevant to properties consisting of dwellings and business premises but predominantly used for business purposes (see paragraph 110 below). However, the report indicated that it had not taken into account the relevant spatial planning documents placing a property in the relevant zone because no such documents had been presented to the experts when the measurements were taken (see paragraph 110 below and section 5 § 3 of the by-law).

31. The measurements showed that the external level of noise in the parking area and in the entrance to the applicant's flat was 48 dB, while the permitted level was 50 dB. It concluded that the noise emanating from the bar to the nearby open and closed areas daily and during the night did not pose any danger to the health of the persons living there.

32. On 6 October 2005 the County Office granted the company O-P. a licence to run a shop.

33. On an unspecified date the applicant challenged this decision before the Ministry of the Economy (*Ministarstvo gospodarstva, rada i poduzetništva*, hereinafter "the Ministry of the Economy") arguing that she had not had an opportunity to participate in the proceedings.

34. On 10 October 2005 the County Office agreed with the report drawn up by company E. concerning the level of noise emanating from the bar. This decision was never served on the applicant and it became final and enforceable on 27 October 2005.

35. On 28 October 2005 the County Office issued the company with a licence to run a bar.

36. On an unspecified date in 2005 the applicant lodged an appeal against the County Office's decision with the Ministry of Tourism, and on 22 December 2005 the Ministry dismissed it as ill-founded.

37. The applicant brought an administrative action against that decision in the Administrative Court, complaining of a number of substantive and procedural flaws in the proceedings before the lower administrative bodies. She contended that she had not had an opportunity to participate in the proceedings, that no measurements of noise and other emissions had ever

been taken in her flat, and that the house had not been equipped with the necessary noise insulation.

38. On 15 May 2006 the Ministry of the Economy dismissed the applicant's appeal against the County Office's decision granting the company a licence to run a shop (see paragraphs 32 and 33 above).

39. The applicant lodged an administrative action with the Administrative Court Against that decision, reiterating her complaints that she had not been able to participate in the proceedings granting the company a licence to run a shop.

40. On 17 December 2009 the Administrative Court allowed the applicant's action against the decisions granting the company a licence to run a bar (see paragraphs 35-37 above) and ordered the administrative bodies to re-examine the case on the grounds that they had failed to decide on the applicant's request for disqualification of the officials who had previously participated in the proceedings.

41. On the same day, the Administrative Court quashed the decisions of the County Office and the Ministry of the Economy granting the company a licence to run a shop (see paragraphs 32-33 and 38-39 above) and remitted the case for re-examination, on the grounds that the applicant had not had an opportunity to participate in the administrative proceedings.

42. On 25 October 2010 the Administrative Inspectorate of the Ministry of Administration (*Ministarstvo uprave*, *Upravna inspekcija*, hereinafter "the Administrative Inspectorate") urged the County Office to adopt a decision on the applicant's complaints. It stressed that the County Office had failed to comply with the judgments of the Administrative Court (see paragraphs 40 and 41 above) and that the relevant thirty-day time-limit for adopting a decision in the administrative proceedings had been significantly exceeded. It also considered that the central problem lay in the impossibility for the applicant to participate in the proceedings, and thus it instructed the County Office to allow the applicant to take part in the proceedings and to take her arguments into account.

43. On 12 November 2010 the company informed the County Office that it was closing the shop.

44. On 24 November 2010 the Administrative Inspectorate again urged the County Office to terminate the proceedings. It considered that there had been no justified reason for not adopting a decision concerning the applicant's complaints. As regards the company's request for a licence to run a bar, the Administrative Inspection identified two central problems: first, insufficient height of the ceiling in the bar, and second, the problem of noise insulation. In respect of the latter, the Administrative Inspection considered that the operating licence issued five years earlier (see paragraph 35 above) could no longer be a valid ground for consideration. It also noted the inordinate length of the proceedings and numerous procedural flaws in

the decisions of the County Office, considering such procedural defects contrary to the relevant domestic law.

45. The administrative proceedings are still pending.

C. Administrative proceedings concerning the noise insulation measurements in the applicant's house

46. On 9 September 2008 the County Office instigated administrative proceedings to ascertain whether the noise emanating from the bar and the shop exceeded the permitted levels under the relevant law.

47. On 15 September 2008 the County Office commissioned an expert report from company EL. concerning the noise insulation in the applicant's house.

48. On 24 November 2008 EL. submitted its report, in which it examined the structure of the separating wall between the living room of the applicant's flat on the first floor and the bar, and the flooring in the bar. It also examined the separating wall between a room in the applicant's flat and the shop, as well as the flooring in the shop.

49. The report found that the noise insulation did not satisfy the necessary requirements. Specifically, the noise insulation between the applicant's living room and the bar was insufficient, while the noise insulation between the shop and the applicant's flat was within the required parameters.

50. On 15 December 2012 a hearing was held at the County Office, at which the company requested that a new noise report be commissioned, arguing that in the meantime it had taken the necessary measures to improve the noise insulation.

51. On 22 December 2008 an official of the County Office carried out an on-site inspection and heard the parties' arguments concerning the expert report of 24 November 2008.

52. On 13 February 2009 EL. carried out further measurements of the noise insulation in the structure of the wall separating the applicant's living room from the bar, and in the flooring of the bar. It found that at the time there was no relevant legislation requiring noise insulation, because at the beginning of 2009 the Croatian Standards Institute (*Hrvatski zavod za norme*) had repealed all previously existing standards for noise insulation. Thus the report only compared the new results with the results from the previous measurements (see paragraph 49 above). Basing its reasoning on that methodology, and relying on the noise measurements carried out by company B-I. (see paragraphs 62 and 63 below) and company E. (see paragraphs 30 and 31 above), the report found that the noise insulation in the bar was sufficient.

53. On 23 February 2009 the County Office agreed with EL.'s report and found that the noise insulation in the bar and the shop was sufficient.

54. On an unspecified date in 2009 the applicant lodged an appeal with the Ministry of Health (*Ministarstvo zdravlja*) challenging the decision of the County Office.

55. On 19 March 2009 the Ministry of Health declared the applicant's appeal inadmissible on the grounds that she did not have standing to lodge an appeal.

56. The applicant lodged an administrative action in the Administrative Court against the decision of the Ministry of Health, arguing that as the owner of a flat located in the same building as the bar she had every interest in lodging an appeal against the decision concerning the noise insulation measures.

57. On 6 June 2012 the Administrative Court quashed the decision of the Ministry of Health and ordered that the applicant's appeal be examined on the merits.

58. The administrative proceedings are still pending.

D. The applicant's complaints to the sanitary inspector

59. In May 2005 the applicant and her husband, B.U., complained to the sanitary inspector (*sanitarni inspektor*) about the level of noise coming from the bar.

60. On 6 June 2007 the Administrative Court, acting upon a complaint concerning the sanitary inspector's failure to respond, ordered that the complaints be examined.

61. During the proceedings, the inspector commissioned an expert report from company B-I.

62. On 21 January 2008 company B-I. submitted a report on its measurements of the level of noise in the bar and in the applicant's flats. The level of noise during the day was measured in the entrance and inside the living room of the applicant's flat on the first floor, with all sources of noise inside the bar switched on; with only an air-conditioning fan running; and while chairs were being dragged across the floor inside the bar. Measurements were also taken inside the applicant's flat on the ground floor, with all sources of noise switched on, and while chairs were being dragged across the floor inside the bar. The level of noise during the night (after 10 p.m.) was measured under the same conditions and in the same places, with an additional measurement of the level of noise in the entrance and inside the living room of the applicant's flat on the first floor while only the audio system in the bar was switched on.

63. For the daytime, taking into account the fact that house was situated near a road, the measurements showed that the level of noise was excessive in the applicant's flat on the ground floor (42dB while the permitted level was 31 dB) and inside the living room of the applicant's flat on the first floor (40 dB while the permitted level was 36 dB) when chairs were being

dragged across the floor inside the bar. During the night, the level of noise was excessive in the entrance to the living room of the flat on the first floor while all sources of noise inside the bar were switched on and in the same area with only the fan running in the bar (46 dB when the permitted level was 44 dB). Furthermore, the level of noise was excessive inside the living room while all sources of noise inside the bar were switched on, and in the same area with only the fan running (30 dB when the permitted level was 27 dB), as well as when chairs were being dragged across the floor inside the bar (40 dB when the permitted level was 27 dB). The level of noise was excessive inside the flat on the ground floor with all sources of noise switched on (30 dB when the permitted level was 26 dB) and while chairs were being dragged across the floor inside the bar (42 dB when the permitted level was 26 dB).

64. On 8 February 2008 the environmental health inspector heard the parties' objections and commissioned further expert reports from companies B-I. and E.

65. On 7 March 2008 company B-I. submitted its report, in which it found that the company had replaced the air-conditioning system which had been generating noise. It then measured the average noise level inside the living room of the applicant's flat on the first floor for three fifteen-minute periods during the day and two fifteen-minute periods during the night. It also measured the average noise level in front of the air-conditioning system during the night for two fifteen-minute periods. The report found that the level of noise coming from the bar was not excessive.

66. In March 2008 company E. submitted its report, which also found that the level of noise coming from the bar was not excessive.

67. On 12 March 2008 the sanitary inspector found that the noise coming from the bar had not exceeded the permitted levels.

68. On an unspecified date in 2008 the applicant's husband lodged an appeal with the Ministry of Health challenging the findings of the sanitary inspector.

69. Meanwhile the applicant's husband obtained an expert report drawn up by company G-P. and dated 15 March 2008 concerning the level of noise emanating from the bar. This report measured the level of noise during the day and night inside the living room of the flat on the first floor and in front of a window in the living room. In assessing the maximum permitted noise levels this report considered that the applicant's house fell within zone 3 under section 5 of the by-law pertaining to dwellings and business premises where the predominant use is as residential property (see paragraph 110 below). It found, taking into account the ambient noise, that the level of noise measured inside the applicant's living room during the night was excessive (30.9 dB with sources of noise switched on when the permitted level was 25 dB) and that the bar's noise protection measures were not adequate.

70. On 28 April 2008 the Ministry of Health upheld the sanitary inspector's decision of 12 March 2008 (see paragraph 67 above).

71. The applicant's husband then lodged an administrative action with the Administrative Court, arguing that the noise measurements had not been taken correctly and that the relevant facts had not been correctly established.

72. On 12 May 2008 the sanitary inspector declared the applicant's complaint of noise nuisance inadmissible on the grounds that he was not competent to examine the case since at the time civil proceedings were pending before the Križevci Municipal Court (*Općinski sud u Križevcima*) (see paragraphs 79-95 below).

73. The sanitary inspector's decision was upheld by the Ministry of Health on 23 June 2008.

74. On an unspecified date in 2008 the applicant lodged an administrative action with the Administrative Court against the above decision of the Ministry of Health.

75. On 28 September 2010 the sanitary inspector carried out an on-site inspection in the bar and found that the necessary noise insulation measures had been put in place.

76. On 22 September 2011 the Administrative Court quashed the decision of the Ministry of Health of 28 April 2008 (see paragraphs 67 and 70 above) and ordered a re-examination of the case on the grounds that the decision had been based on contradictory expert reports.

77. On 10 November 2011 the Administrative Court quashed the decision of the Ministry of Health of 23 June 2008 (see paragraph 72 above) and ordered the sanitary inspector to examine the applicant's complaints on the merits.

78. The proceedings before the sanitary inspector are still pending.

E. Civil proceedings instituted by the applicant

79. On 10 January 2006 the applicant lodged a civil action in the Križevci Municipal Court (*Općinski sud u Križevcima*) against the company and its director, seeking an injunction against any further noise emissions from the bar.

80. At a hearing on 1 June 2006 the applicant gave evidence before the Križevci Municipal Court. She contended that the noise emanating from the bar had become unbearable and that it was affecting her everyday life. She also complained about smell and other nuisance coming from the bar, in particular about the problems she and her husband had had with drunk and violent customers of the bar.

81. On 29 September 2006 the Križevci Municipal Court conducted an on-site inspection, to which it invited two expert witnesses from the Zagreb Public Health Institute (*Zavod za javno zdravstvo Grada Zagreba*,

hereinafter “the Institute”). It ordered the experts to take the necessary measurements and commissioned noise and pollution expert reports.

82. In its report of 2 October 2006 the Institute took into account the expert report drawn up by company E. (see paragraphs 20 and 31 above). In assessing the maximum permitted noise levels this report observed that the house was situated near a road and considered that it fell within zone 3 under section 5 of the by-law pertaining to dwellings and business premises but predominantly residential properties (see paragraph 110 below). The report found that the level of noise in the open area surrounding the bar and inside the applicant’s flat did not exceed the permitted levels for daytime and evening.

83. The Institute also submitted a report concerning the level of pollution emanating from the bar, which found that all emissions were within the permitted levels.

84. On 3 and 5 January 2007 the applicant objected to the Institute’s reports. She contended that noise measurements had been taken only in the living room of her flat on the first floor, and that all sources of the noise in the bar had been switched off when the measurements were taken. She asked the Križevci Municipal Court to question four witnesses, Z.S., Ž.P., I.Č. and D.B., who could confirm her allegations. She also pointed out that the experts had failed to take into account the documentation concerning the noise insulation in the building, and had thus erred in their findings.

85. On 15 February 2007 the Križevci Municipal Court heard the expert witnesses in the presence of the applicant’s lawyer. The noise expert reiterated his findings, and argued that the level of noise had been measured only in the living room, which was the closest area to the bar and in which, as the applicant had told him herself, the noise nuisance was the greatest. He also submitted that the noise had been measured on the balcony of the applicant’s flat on the first floor and that while the measurements were being taken all sources of the noise in the bar had been switched on. He explained that he had not taken into account the documentation on noise insulation because that was not part of his remit. He also considered that the operation of the air-conditioning fan in the bar could in no way influence the level of noise in the applicant’s flat. Lastly, the expert witness pointed out that the previous noise measurements had not found the level of noise in the applicant’s flat to be excessive.

86. At a hearing on 27 March 2007 the Križevci Municipal Court heard the applicant, who reiterated her objections to the expert reports. She asked for the witnesses who had been present during the measuring to be questioned and for a new expert report to be commissioned.

87. At the same hearing the Križevci Municipal Court dismissed the applicant’s request and terminated the proceedings.

88. On 3 April 2007 the four witnesses, Z.S., Ž.P., I.Č. and D.B., who the applicant had asked to be heard at the trial, submitted a statement to the

Križevci Municipal Court expressing their dissatisfaction with the manner in which that court had accepted the expert report which, according to them, had contained a number of incorrect statements.

89. On 10 April 2007 the Križevci Municipal Court dismissed the applicant's civil action, on the grounds that the expert report showed that the level of noise had not exceeded the permitted level and that other evidence from the case file showed that there had been no other nuisance coming from the bar. As regards the applicant's request for witnesses to be heard, that court held that all relevant facts had been sufficiently established and that there had been no need to take further evidence in respect of the level of noise, particularly since it considered the expert reports well drafted and convincing.

90. The applicant lodged an appeal against the above judgment with the Koprivnica County Court (*Županijski sud u Koprivnici*) on 29 May 2007, challenging the findings of the first-instance court and reiterating her previous arguments.

91. On 27 March 2008 the Koprivnica County Court dismissed the applicant's appeal against the Križevci Municipal Court's judgment as ill-founded. It considered the expert reports convincing and well constructed.

92. On 28 May 2008 the applicant lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*) against the judgment of the Koprivnica County Court, reiterating her arguments that her private life, home and property had been unjustifiably interfered with by the company.

93. On 2 June 2008 the applicant lodged a criminal complaint with the Križevci Municipal State Attorney's Office (*Općinsko državno odvjetništvo u Križevcima*) against the Institute's experts and the managing director of the company, accusing them of perjury.

94. On 16 October 2008 the Constitutional Court dismissed the applicant's constitutional complaint as ill-founded, endorsing the findings of the lower courts. This decision was served on the applicant on 28 November 2008.

95. On 17 December 2008 the Križevci Municipal State Attorney's Office rejected the applicant's criminal complaint on the grounds that any objection as to the findings of the experts was within the competence of the civil courts and that there was no evidence that the experts or the company director had deliberately given false evidence to the court.

F. The applicant's other complaints

96. In the period between 2002 and 2013 the applicant called the police on a number of occasions in connection with noise and other emissions from the bar.

97. The police were called in total fifty-seven times (of which forty-nine calls were by the applicant) to the bar in connection with breaches of public peace and order; these calls resulted in twenty-six minor offences proceedings against various individuals.

98. The police also instigated thirty visits by other state bodies (the revenue service, health inspectorate and so on) to the bar, which resulted in sixteen minor offences proceedings for breaches of public peace and order.

99. The applicant also complained to the Križevci Municipal State Attorney's Office, the Central Inspectorate (*Državni Inspektorat*), the Office of the Prime Minister of the Republic of Croatia and the Croatian Parliament (*Hrvatski sabor*) that local and domestic authorities had taken no action, contending that the level of noise and other nuisance coming from the bar had adversely affected her health, dignity, her private and family life and respect for peaceful enjoyment of her possessions.

100. On 27 March 2009 a parliamentary board dealing with the individual complaints urged the Ministry of Health and the Central Inspectorate Office to examine the applicant's complaints.

101. On 11 October 2012 the parliamentary board again urged the competent authorities to examine the applicant's complaints, pointing out that the Administrative Court's judgments had never been complied with and that there had been numerous police call-outs to the bar.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

A. Relevant domestic law

1. Constitution

102. 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 and 85/2010) read as follows:

Article 34

"The home is inviolable ... "

Article 35

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

Article 48

"The right of ownership shall be guaranteed ..."

2. *Property Act*

103. The relevant provisions of the Property Act (*Zakon o vlasništvu i drugim stvarnim pravima*, Official Gazette nos. 91/96, 68/98, 137/99, 22/00, 73/00, 129/00, 114/01, 79/06, 141/06, 146/08, 38/09, 153/09 and 143/12) read:

Emissions

Section 110

"(1) No one may exploit or use a property in a manner causing smoke, unpleasant odours, soot, sewage outflow, subsidence, noise or other nuisance to reach the property of another, either accidentally or in the nature of that use, if, given the purpose of the property, they are excessive in place and time, cause more substantial damage or are prohibited under the relevant law (excessive indirect emissions).

(2) The owners of properties exposed to excessive indirect emissions are authorised to request the owner of the property from which such emissions emanate to eliminate the cause of the emissions and to compensate for the resulting damage, as well as to refrain from any activities causing the excessive emissions until all measures required to eliminate the possibility of excessive emissions have been taken.

(3) Without prejudice to the provision of paragraph 2 of this section, where excessive emissions are the product of activities authorised by the competent authority, the owners of the exposed property do not have the right to request the cessation of the activity as long as the relevant permissions exist; however, they are authorised to claim compensation for damage caused by the emissions, as well as to take appropriate measures to prevent excessive emissions in the future or to minimise them.

(4) Unless there is a special legal basis, the owner of a property should not have to endure the emission of smoke, unpleasant odours, soot, sewage outflow, subsidence, noise (direct emissions) directly to his real property in any way, and he is authorised to request the cessation of the emissions and compensation for any damage sustained.

(5) An owner whose property is in foreseeable danger of being exposed to direct or indirect emissions from another property, which he should not otherwise have to endure, is authorised to require the necessary interim measures."

Protection from nuisance

Section 167

"(1) If a third party unlawfully disturbs the owner, without depriving him of his possessions, the owner may request the court to issue an injunction.

(2) In order to exercise his right referred to in paragraph 1 of this section in courts or in the proceedings before another competent authority, the owner has to prove his ownership and that there has been nuisance by the third party; and if the third party claims to have the right to carry out the impugned activity, he or she has the burden of proof.

(3) If damage is sustained as the result of nuisance referred to in paragraph 1 of this section, the owner is entitled to claim compensation in accordance with the general rules governing compensation for damage ... "

3. *Hospitality Industry Act*

104. The relevant provisions of the Hospitality Industry Act (*Zakon o ugostiteljskoj djelatnosti*, Official Gazette nos. 136/2008, 152/2008, 43/2009, 88/1010, 50/2012, 80/2013) are:

Section 14

> "(1) In order to provide hospitality services a property must be adequately equipped, and must meet all other conditions under this Act or regulations based on this Act (the minimum conditions) **...**"

Section 39

> **"**(2) Monitoring the application of this Act and the related legislation, as well as hospitality services provided by physical and legal persons, shall be carried out by trading standards inspectors and other inspectors, each within their competence ... "

105. The by-law on minimum conditions for premises providing hospitality services – restaurants, bars, other catering facilities and basic catering services facilities (*Pravilnik o minimalnim uvjetima ugostiteljskih objekata iz skupina "Restorani", "Barovi", "Catering objekti" i "Objekti jednostavnih usluga"*, Official Gazette, no. 82/2007) provide:

Section 39

> "Noise protection measures must be put in place, as provided under the relevant law."

4. *Sanitary inspection*

106. The Sanitary Inspection Act (*Zakon o sanitarnoj inspekciji*, Official Gazette, nos. 113/2008 and 88/2010) provides:

Section 2

> "Sanitary inspection is monitoring of the application of relevant laws for the protection of health with regard to ... noise nuisance ... "

Section 13

> "... sanitary inspection in connection with noise nuisance shall monitor the application of laws and other regulations concerning noise protection aimed at the protection of health ..."

Section 24

> "If during an inspection the sanitary inspector finds breaches of laws which are within the provenance of other state bodies, he or she shall inform the competent authority."

Section 25

> "The sanitary inspector shall institute proceedings of his own motion whenever circumstances suggesting that administrative proceedings should be opened in order to

protect health are brought to his attention; and in that regard he shall take into account any individual complaint.

The sanitary inspector shall examine all individual complaints made by physical or legal persons concerning the area of his competence and he shall inform the complainant in writing about measures taken ... "

Section 26

"If the sanitary inspector considers that there is no reason to commission a further expert report but the complainant insists on it, the proceedings shall be conducted on the basis of the request of the party ... "

Section 30

"When the sanitary inspector finds that the law has been breached, he shall order the elimination of the irregularity within the appropriate time-limits, if that can be done without cessation of the activity.

In the event of a breach of the law, the sanitary inspector shall order a ban on the use of given working premises, industry, machines and equipment, as well as the prohibition of further activity by named individuals ... "

Section 31

"During a sanitary inspection, the inspector is authorised to issue an oral order to any physical or legal person, until that person complies with the law, requesting it not to use given working premises, industry, machines and equipment, and not to do any further work, and may immediately enforce the order under section 33 paragraph 1 of this Act, without any further decision in cases of ...

9. non-compliance with the noise insulation requirements or if the level of noise exceeds 5 dB(A) ..."

5. Noise protection legislation

107. The 2003 Noise Protection Act (*Zakon o zaštiti od buke*, Official Gazette no. 20/2003) provided:

Section 2

"Noise endangering the health of people within the meaning of this Act is any sound exceeding the permitted levels of noise with a view to the place and time of emission in the area where people live and work. "

Section 4

" ... Noise protection measures are ...

3. noise insulation in workplaces and residential premises ...

5. measurements of the level of noise,

6. temporary limitations on noise emissions."

Section 11

"Buildings must be constructed in such a manner that the level of noise in the building or the surrounding areas does not endanger the health of people and ensures peaceful and sustainable living conditions."

Section 13

"The competent state body shall not issue a certificate attesting that the minimal technical requirements for an activity are met unless an environmental inspection confirms that noise protection measures have been put in place ... "

Section 17

"It is prohibited to perform any work or activity in a manner disturbing the peace and rest of people in both closed and open living areas."

Section 25

"During a sanitary inspection inspectors are authorised to:

1. commission noise measurements ... in areas where people live and work,

2. impose noise protection measures,

3. prohibit the use of a building until noise protection measures have been put in place,

4. prohibit the use of a source of noise until noise protection measures have been put in place,

5. prohibit activities endangering rest and peace at night, unless the same result can be achieved by the use of measures under 4 above,

6. prohibit the use of a machine, transport vehicle, or equipment which does not have a certificate of the level of noise it produces under certain conditions,

7. prohibit an activity which has commenced without the permission of the competent body attesting that the measures of noise protection have been put in place ... "

108. On 20 February 2009 a new Noise Protection Act was enacted (*Zakon o zaštiti od buke*, Official Gazette nos. 30/2009 and 55/2013) which repealed the 2003 Noise Protection Act, although as regards the issues raised in the present case it sets out substantially the same requirements.

109. The relevant provisions of the by-law concerning activities which require inspection of the noise protection measures (*Pravilnik o djelatnostima za koje je potrebno utvrditi provedbu mjera za zaštitu od buke*, Official Gazette no. 91/2007) are:

Section 2

"All activities using devices emitting noise whose level of noise may in certain circumstances exceed permitted levels in the surrounding dwellings and/or working premises shall be subjected to inspection of noise protection measures."

Section 3

"When more than one activity is registered on the same premises, stricter measures of noise protection shall apply."

Section 4

"Inspection of noise protection measures shall include:

1. measurements of the level of noise,

2. inspection of noise insulation,

3. inspection of noise protection measures taken with regard to the measurements under 1 and 2 above ... "

Section 6

"Noise protection measurements must be conducted during working time in the period when residential noise is at its lowest level."

Section 8

"A certificate that noise protection measures have been put in place must be produced whenever [the premises on which] the activity is carried out and where closed premises which should be protected from noise are placed in the same or adjacent connected buildings ... "

Section 10

"The residential and specific noise emanating from the relevant activity must be measured ... "

Section 11

"During individual noise measurements all sources of noise on the premises where the activity is carried out must be switched on. The measurements must be taken during all work periods. Sources of noise should be switched on and turned up to the maximum level used and in the least favourable conditions for the premises to be protected."

110. The relevant sections of the by-law on the maximum permitted levels of noise in areas where people live and work (*Pravilnik o najvišim dopuštenim razinama buke u sredinama u kojima ljudi rade i borave*, Official Gazette no 145/2004) provides:

Section 5

"(1) The limit for external noise levels is set out in table no. 1 of this by-law.

Table no. 1

Zone	Purpose of premises	Noise limit L_{RAeq} in dB(A)	
		day(L_{day})	night(L_{night})
1.	Holiday and health resorts	50	40
2.	Exclusively residential	55	40
3.	Mixed zone, predominantly residential	55	45
4.	Mixed zone, predominantly for business purposes, with dwellings	65	50
5.	Business zone (production, industry, storage and service premises)	- On the borders of the property noise should not exceed 80 dB(A) - Noise on the border of the zone should not exceed the permitted levels for the adjacent zone	

(2) The levels of noise in table no. 1 of this by-law concern all existing and planned sources of noise taken together.

(3) The zones in table no. 1 of this by-law shall be determined by the relevant spatial planning document."

Section 6

"... (2) For areas where the residential level of noise is below the level provided in table no. 1 of this by-law, the level of noise produced by newly built, reconstructed or adapted buildings and their sources of noise must not exceed the existing level of noise by more than 1 dB(A)."

Section 8

"(1) The limit for the interior equivalent L_{RAeq} noise level for the [above] zones is provided in table no. 2. This is applicable when the doors and windows are closed.

Table no. 2

Zone provided in table no. 1 of this by-law	1	2	3	4	5
The maximum limit for the equivalent L_{RAeq} noise level in dB(A) - day	30	35	35	40	40
- night	25	25	25	30	30

Section 10

"The maximum standard interior noise levels $L_{RAFmax,nT}$ with regard to the work of service equipment (water-supply systems, energy-supply systems, heating, air conditioning ...) are given in table no. 3 of this by-law.

Table no. 3

Noise emission	Permitted level of noise $L_{RAFmax,nT}$ in dB(A)
Constant or sequenced noise (for example heating)	25
Momentary or transient noise (for example lifts, toilet flushing)	30

B. Relevant international standards

111. Most environmental noise can be approximately described by one of several simple measures. The sound pressure level is a measure of the air vibrations that make up sound and it indicates how much greater the measured sound is than the threshold of hearing. Because the human ear can detect a wide range of sound pressure levels, they are measured on a logarithmic scale with units of decibels (dB). If the instantaneous noise pressure level is measured this is called "A-weighting" (abbreviated dBA), whereas if the noise pressure level is measured over a certain time span, this is called the "equivalent continuous sound pressure level" (abbreviated LAeq). Such average levels are usually based on integration of A-weighted levels. A simple LAeq type measure will indicate reasonably well the expected effects of specific noise.

112. The World Health Organization (WHO) has published 'Guidelines for Community Noise' (1999) and 'Fact Sheet No. 258, on Occupational and Community Noise' (revised February 2001) which give guideline values for various environments and situations (Chapter 4 of the Guidelines). These guideline values are set at the level of the lowest adverse effect on health, meaning any temporary or long-term deterioration in physical, psychological or social functioning that is associated with noise exposure, and represent the sound pressure level which affects the most exposed receiver in a given environment.

113. In relation to noise levels in homes, the guidelines state that to protect the majority of people from being seriously annoyed during the daytime, the sound pressure level on balconies, terraces and in outdoor living areas should not exceed 55 dB LAeq for steady continuous noise and should not exceed 50 dB LAeq to protect people from being moderately

annoyed. These values are based on annoyance studies, but most European countries have adopted a 40 dB LAeq as the maximum allowable for new developments.

114. At night, sound pressure levels at the outer walls of living spaces should not exceed 45 dB LAeq, so that people may sleep with bedroom windows open. This value has been obtained by assuming that the noise reduction from outside to inside with a window partly open is 15 dB and, where noise is continuous, the equivalent sound pressure level should not exceed 30 dB indoors, if negative effects on sleep, such as a reduction in the proportion of REM sleep, are to be avoided.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 AND 8 OF THE CONVENTION

115. The applicant complained that there had not been an adequate and effective response by the domestic authorities to bring the nuisance from a bar located in her house to an end. She relied on Articles 6 and 8 of the Convention, the relevant parts of which read as follows:

Article 6

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

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."

116. The Court reiterates that it is the master of the characterisation to be given in law to the facts of the case (see *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of Judgments and Decisions* 1998-I). While Article 6 affords a procedural safeguard, namely the "right to court" in the determination of one's "civil rights and obligations", Article 8 serves the wider purpose of ensuring proper respect for, *inter alia*, private life. In this light, the decision-making process leading to measures of interference must be fair and such as to afford due respect to the interests safeguarded by

Article 8 (see *Iosub Caras v. Romania*, no. 7198/04, § 48, 27 July 2006, and *Moretti and Benedetti v. Italy*, no. 16318/07, § 27, 27 April 2010).

117. Therefore, in the instant case the Court considers that the complaint raised by the applicant should be examined under Article 8 (see *Zammit Maempel v. Malta*, no. 24202/10, § 33, 22 November 2011).

A. Admissibility

1. Non-exhaustion of domestic remedies and compliance with the six-month time-limit

(a) The parties' arguments

118. The Government considered that instead of instituting the civil proceedings by which she had sought an injunction against all nuisance emanating from the company's premises (see paragraph 103 above and section 167 of the Property Act), the applicant should have brought an action seeking an injunction against further emissions from the company's premises (see paragraph 103 above and section 110 of the Property Act). The latter remedy was more focused on the problem of noise nuisance and was thus more appropriate for the applicant's complaints. Furthermore, the applicant had failed to lodge a request with the local administration for a reduction in the working hours of the bar and the shop, which would have eliminated noise nuisance during the night. In any event, the Government considered that the applicant's complaints were premature, since a number of proceedings before the competent domestic authorities, namely the sanitary inspector, the County Office, various inspectorates, and the Administrative Court, were still pending. In the Government's view all these remedies were effective and appropriate for the applicant's complaints, and thus she should have waited for the decisions of the domestic authorities before bringing her complaints before the Court.

119. On the other hand, the Government observed that the alleged nuisance from the company's premises had commenced in 2002 and that the applicant had brought her application before the Court only in 2009, namely seven years later. In the Government's view it was obvious from the applicant's submissions that she considered that the remedies she had been pursuing before the domestic authorities were ineffective. Therefore, she should have brought her complaints to the Court within six months of realising that this was the case. However, at that time she had lodged a further civil action in the domestic courts, although she should have been aware that it would not have produced a different result from the one obtained during the administrative proceedings.

120. The applicant argued that she had exhausted all available and effective domestic remedies concerning her complaints about the nuisance emanating from the company's premises. This had resulted in a number of

judgments of the Administrative Court in her favour, but these judgments had never been enforced by the competent administrative authorities. She therefore considered that, given that she had been pursuing various remedies before the competent administrative authorities for more than ten years without ever having her complaints effectively and properly examined, and thus never achieving a final settlement of her case, her application to the Court could not be considered premature for not waiting for a final decision by the administrative authorities. She also considered that she had diligently pursued the domestic remedies in the civil courts, considering that the courts could give her protection, but this had resulted only in manifestly unfair proceedings and decisions. She had therefore lodged a constitutional complaint, and when the Constitutional Court had declined to examine it she had lodged an application with the Court.

(b) The Court's assessment

121. The Court considers that both the question of exhaustion of domestic remedies and compliance with the six-month time-limit, which are closely interrelated (see, amongst many others, *Čamovski v. Croatia*, no. 38280/10, § 26, 23 October 2012), should be joined to the merits, since they are linked to the substance of the applicant's complaint that the State had failed to protect her from excessive nuisance for a prolonged period of time (see, *mutatis mutandis*, *Oluić v. Croatia*, no. 61260/08, § 41, 20 May 2010).

2. Abuse of the right of individual application

(a) The parties' arguments

122. The Government argued that the applicant had submitted a number of documents to the Court concerning domestic proceedings which had been instituted by her husband and not by her, and had also submitted a number of documents concerning property disputes with her neighbours which were not related to the issues of the present case. She had also failed to inform the Court that the shop had been closed. In the Government's view the manner in which the applicant had argued her case had been aimed at misleading the Court into accepting her complaints, and the language in which she had expressed her dissatisfaction with the conduct of the domestic authorities had not been appropriate.

123. The applicant submitted that her complaints to the Court could in no way be considered vexatious, since she had complained to the Court because she had been helpless to defend hers and her family's dignity and respect for their private life and home at the domestic level.

(b) The Court's assessment

124. The Court reiterates that the notion of abuse of the right of application in general is any conduct on the part of an applicant that is manifestly contrary to the purpose of the right of individual application as provided for in the Convention and which impedes the proper functioning of the Court or the proper conduct of the proceedings before it (see, for example, *Miroļubovs and Others v. Latvia*, no. 798/05, § 65, 15 September 2009).

125. In the case at issue the Court does not consider that by submitting all the relevant documents concerning noise and other nuisance allegedly coming from the company's premises to the applicant's flat and the documents concerning the attempts to put an end to such nuisance the applicant has abused her right of individual application. The Court also does not consider that the applicant deliberately withheld the information concerning the shop, since that information followed from the documents available to the Court and in any event is not central to her complaints, which predominantly concern nuisance from the bar. Furthermore, it cannot be held that by arguing her case the applicant in any way abused her rights. The documents submitted by the applicant and all her arguments in that regard are part of the dispute between the parties about the alleged violation of the applicant's rights under Article 8 of the Convention. As such they are available for the parties' arguments, which the Court can accept or reject but which cannot be considered in themselves as an abuse of the right of application.

126. The Government's objection should thus be rejected.

3. *Non-significant disadvantage*

(a) The parties' arguments

127. The Government submitted that the applicant had not suffered any significant disadvantage from the alleged noise emanating from the bar, because her house was situated near a public road where vehicles in any event produced noise, as had been confirmed by the expert reports commissioned during the proceedings. Therefore, even if the noise coming from the bar were eliminated, there would still be a high level of noise affecting the applicant's flat.

128. The applicant argued that over the years she had been subjected to constant distress caused by excessive noise and other nuisance from the bar. She considered that the Government's argument was unacceptable because it implied that she had had no right to protection from the excessive level of noise from the bar because she was already exposed to high noise levels from the road. In her view the fact that the level of noise from the road was already high was an argument in favour of protecting her from the additional excessive noise nuisance from the bar.

(b) The Court's assessment

129. The Court notes at the outset that the gist of the applicant's complaints is the inaction of the domestic authorities in responding properly to her complaints about the level of noise and other nuisance emanating from the bar, and not the general level of noise where the applicant lives. Moreover, without assessing at this point the particular aspects of the available noise expert reports, the Court observes that the expert reports commissioned during the proceedings took into account the fact that the applicant's house was located near a road. Nevertheless, the reports of 21 January and 15 March 2008 found that the level of noise from the bar was excessive and that the noise protection measures in the bar were not adequate (see paragraphs 62-63 and 69 above).

130. Therefore, having regard to the Government's submission, the Court rejects this objection.

4. Conclusion

131. The Court considers that this part of the application 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' arguments

132. The applicant contended that the problem with the nuisance emanating from the company's premises had started in August 2002, when the company had begun reconstruction work on its premises in order to open a bar and a shop. She had not been allowed to participate in the application process which granted the company planning permission to carry out the reconstruction, nor did she have any opportunity to put forward her objections in that regard. However, the Administrative Court had accepted her arguments and remitted the case for re-examination, but to date the administrative bodies had not settled the issue and the bar was still open. Furthermore, she had not had an opportunity to participate in the administrative proceedings granting the company operating licences to run a bar and a shop. In those proceedings she had also complained to the Administrative Court, which had ordered the administrative bodies to allow her to participate in the proceedings, but that too had been to no avail, as the administrative bodies had failed to comply with the Administrative Court's judgment. The Administrative Court had also upheld several other complaints she had submitted, but the judgments of the Administrative Court had never been enforced, and the proceedings before the administrative bodies were still pending after more than ten years. She had

attempted to use remedies in the civil courts, but the Križevci Municipal Court had dismissed all her evidence and had eventually based its judgment on an expert report which was flawed because measurements had not been taken properly. She had attempted to demonstrate the irregularities in the expert report by calling witnesses who had been present when the measurements were taken, but the Križevci Municipal Court had dismissed her request without providing any relevant reasons.

133. The applicant referred to the expert reports of 21 January and 15 March 2008 (see paragraphs 62-63 and 69 above) which showed that the level of noise emanating from the bar had been excessive and that her family had been living in those conditions for six years. The expert report of 24 November 2008 concerning the noise insulation (see paragraphs 48 and 49 above) had also confirmed this. It was not true that appropriate measures for improving the noise insulation had been carried out after the latter report. That had been confirmed by the Administrative Court's judgment quashing the decisions of the administrative bodies, which had found that the company had carried out such improvements. This had all resulted in years of her family's exposure to excessive noise, music, shouting, singing, glass smashing and various other activities, as well as to threats, public urinating and aggressive behaviour by customers of the bar, which was why the police had also intervened on a number of occasions. The excessive levels of noise she and her family had been exposed to had adversely affected their mental and physical well-being.

134. The Government considered that there had been no interference with the applicant's right to respect for her private life and her home, because the level of noise and other alleged nuisance had not attained the minimum level of severity required by Article 8 of the Convention. Contrary to the case of *Oluić* (cited above) the level of noise in the case at issue had been excessive only a few times and had not been sufficiently severe to raise an issue under Article 8. The Government firstly pointed out that the applicant's house was located near a road. Moreover, the measurements of 5 October 2005 (see paragraphs 30 and 31 above) had showed that the level of noise had not been excessive and had not posed any threat to the health of persons living in the surrounding dwellings. The measurements of 21 January 2008 (see paragraphs 62 and 63 above) had showed that the noise had only slightly exceeded the permitted levels. It was true that this report had showed that the permitted level of noise had been significantly exceeded (by 13 and 15 dB) in the living room of the applicant's flat on the first floor and inside the flat on the ground floor, but that had happened only when chairs were being dragged, which had been only a temporary occurrence that could not affect any of the applicant's rights. Furthermore, the measurements of March 2008 (see paragraph 69 above) had found that the level of noise was excessive during the night, but that needed to be viewed in the context of the fact that the house was

located near a road. The expert report of 14 November 2008 concerning the noise insulation in the house (see paragraphs 48-49 and 52 above) had first found the noise insulation insufficient but then, after the company had carried out the necessary work on the insulation, the report had found the noise insulation adequate. In addition, the expert report commissioned during the civil proceedings confirmed that the noise in the applicant's flat did not exceed permitted levels, and in that regard the applicant had all the procedural guarantees of a fair trial to challenge the findings. The Government also pointed out that the expert reports had not found the level of any other emissions affecting the applicant's flat excessive. The applicant had not argued or demonstrated that she had suffered any damage to her health or well-being as a result of the alleged nuisance or that it had adversely affected any of her property rights and interests.

135. Furthermore, the Government considered that the applicant had had every opportunity to participate in the proceedings at the domestic level and that she had used those opportunities to lodge numerous complaints. She had also taken complaints to the Administrative Court, which had given her leave to participate in the application process for operating licences, although that was not mandatory under the relevant domestic law. The applicant had taken an active part in all the noise measurements conducted during the domestic proceedings, but during the first noise measurements in 2002 (see paragraph 22 above) she had expressly refused to allow those measurements to be taken in her flat. She had also complained about various kinds of odour nuisance, but that had also been duly examined and all her complaints in that regard had been dismissed.

2. *The Court's assessment*

(a) General principles

136. The Court reiterates that Article 8 of the Convention protects the individual's right to respect for his private and family life, his home and his correspondence. A home will usually be a place, a physically defined area, where private and family life goes on. The individual has a right to respect for his home, meaning not just the right to the actual physical area, but also to the quiet enjoyment of that area. Breaches of the right to respect for the home are not confined to concrete or physical breaches, such as unauthorised entry into a person's home, but also include those that are not concrete or physical, such as noise, emissions, smells or other forms of interference. A serious breach may result in the breach of a person's right to respect for his home if it prevents him from enjoying the amenities of his home (see *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 96, ECHR 2003-VIII).

137. The Court reiterates further that although there is no explicit right in the Convention to a clean and quiet environment, where an individual is

directly and seriously affected by noise or other pollution an issue may arise under Article 8 of the Convention (see *Hatton and Others*, cited above, § 96; *López Ostra v. Spain*, judgment of 9 December 1994, Series A no. 303-C; *Powell and Rayner v. the United Kingdom*, judgment of 21 February 1990, Series A no. 172, p. 18, § 40; and *Furlepa v. Poland* (dec.), no. 62101/00, 18 March 2008).

138. Although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by public authorities, this may involve those authorities adopting measures designed to secure respect for private life even in the sphere of relations between individuals (see, among other authorities, *Stubbings and Others v. the United Kingdom*, judgment of 22 October 1996, *Reports* 1996-IV, pp. 1505, § 62, and *Surugiu v. Romania*, no. 48995/99, § 59, 20 April 2004). Whether the case is analysed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicants' rights under paragraph 1 of Article 8 or in terms of an interference by a public authority to be justified in accordance with paragraph 2, the applicable principles are broadly similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole. Furthermore, even in relation to the positive obligations flowing from the first paragraph of Article 8, in striking the required balance the aims mentioned in the second paragraph may be of a certain relevance (see *Hatton and Others*, cited above, § 98).

(b) Application of these principles to the present case

(i) Whether the nuisance were sufficient to trigger the authorities' positive obligations under Article 8

139. The first question for decision is whether the nuisance reached the minimum level of severity required for it to amount to an interference with the applicant's rights to respect for her home and private life. The assessment of that minimum is relative, and depends on all the circumstances of the case, such as the intensity and duration of the nuisance and its physical or mental effects (see *Oluić*, cited above, § 49).

140. The Court finds the present case similar to the case of *Oluić* (cited above) in which it examined complaints of excessive levels of noise from a bar located in the building in which the applicant lived, and to the case of *Moreno Gómez v. Spain* (no. 4143/02, ECHR 2004-X) concerning complaints of excessive levels of noise emanating from nightclubs. In the former case the Court was satisfied, on the basis of a number of unequivocal and compelling tests carried out over a period of eight years, that the level of noise there exceeded the maximum permitted levels under the domestic law and under the relevant international standards (see *Oluić*, cited above, §§ 52-63). The Court reached the same conclusion in the case of *Moreno*

Gómez, in which it found it obvious that the applicant's daily life was disrupted by the excessive night-time noise from nightclubs, which continued over a number of years and thus amounted to a breach of Article 8 (see *Moreno Gómez*, cited above, §§ 58-60). Similarly, in the case of *Mileva and Others v. Bulgaria* (nos. 43449/02 and 21475/04, 25 November 2010), comparable to the present case in that it concerned allegations of excessive noise from a computer club located in the same residential building as the applicants' and below their flat, the Court found, even without any noise tests being carried out at the domestic level, that the disturbance affecting the applicants' homes and their private and family lives reached the minimum level of severity under Article 8 of the Convention. It based its findings on the noise and various other disturbances created by those attending the computer club in and around the residential building (see *Mileva and Others,* cited above*,* § 97).

141. In the present case the Court is unable to draw any clear conclusion from the expert reports commissioned during the domestic proceedings as to the exact level of noise coming from the bar. It observes, however, that several expert reports suggest that the noise in the applicant's flat exceeded the permitted levels.

142. In this connection the Court notes that the first noise tests concerning the level of noise and noise insulation in the bar were carried out in August 2002 by company Z. (see paragraph 22 above). This report indicated that the level of noise and the noise insulation were in compliance with the relevant domestic law. However, the noise level was not measured in the applicant's flat at the time, and these findings were later refuted by the noise measurements of 21 January 2008 (see paragraphs 62 and 63 above) and 15 March 2008 (see paragraph 69 above). As regards the reference in the report that the applicant had declined to allow noise measurements to be taken in her flat, the Court sees no reason not to accept the findings of the Ministry of Tourism of 17 September 2003 and the Administrative Court of 6 September 2007, which both found that the applicant had not been given an opportunity to participate in the proceedings (see paragraph 26 above). Therefore, the Court is unable to place sufficient confidence in the assertion made in this report.

143. The noise expert report of 5 October 2005 drawn up by company E. also found that the level of noise was not excessive. This report, however, did not measure the level of noise in the applicant's flat, and it took the limit for external noise reception under the by-law applicable to dwellings in areas predominantly used for business purposes (see paragraphs 30 and 110 above and zone 4 under table no. 1 of the by-law). Thus, the report found that the measured level of noise at 48 dB in the parking area and in the entrance to the applicant's flat did not exceed the permitted level of 50 dB during the night (see paragraph 31 above). It is not, however, clear how the report came to the conclusion that the house was predominantly used for

business purposes, given that the applicant used 59.63% of the house as living space, while the company used 40.37% for business purposes (see paragraph 7 above). This leads to the conclusion that the house was predominantly used as a residential property, and that the maximum noise level under the by-law should be 45 dB (see paragraph 110 above and zone 3 of table no. 1 of the by-law) applicable to premises predominantly used as dwellings. This approach, considering the applicant's house to fall within zone 3 under table no. 1 of the by-law, was later used in two reports on noise measurements (see paragraphs 69 and 82 above). Therefore, if the expert report drawn up by company E. had correctly placed the house under the relevant zone it would have found that the measured level of noise at 48 dB in fact exceeded the permitted level of 45 dB under the relevant domestic law and the international standards (see paragraph 114 above).

144. The expert report of 2 October 2006, commissioned from the Institute during the civil proceedings, relied on company E.'s report, above, and found that the noise did not exceed the permitted levels (see paragraph 82 above). For the reasons set out above concerning company E.'s report the Court has serious doubts as to the findings of the Institute. Its relevance is placed even more in question by the fact that the civil courts, without providing the relevant reasons, never responded properly to the allegations made by the applicant and several witnesses that the Institute's experts measured the level of noise while the sources of noise in the bar were switched off (see paragraphs 84 and 88-89 above). Furthermore, the noise expert stated at the hearing before the Križevci Municipal Court that he had not taken into account the documentation concerning the noise insulation, and that he considered the running of the air-conditioning fan in the bar irrelevant as regards the noise measurements (see paragraph 85 above) although it was a relevant factor for the measurements conducted by company B-I. (see paragraphs 63 and 65 above) and it was provided as a relevant factor under the domestic law (see paragraph 110 above and section 10 of the by-law).

145. Further noise tests were carried out by company B-I. on 21 January and 7 March 2008 (see paragraphs 62-63 and 65 above). The first report found that when chairs were being dragged across the floor inside the bar during the day the level of noise in the applicant's flat on the ground floor exceeded the permitted level by 11 dB and in the living room of the applicant's flat on the first floor by 4 dB. During the night the level of noise in the entrance to the living room of the applicant's flat on the first floor exceeded the permitted level by 2 dB while all sources of noise in the bar were switched on and while only the air-conditioning fan was running in the bar. Inside the living room the level of noise during the night was over the limit by 3 dB when the sources of noise were turned on and when the fan was running, and by 13 dB while the chairs were being dragged across the floor in the bar. The level of noise inside the flat on the ground floor was

over the limit by 4 dB while the sources of noise were switched on and by 16 dB while the chairs were being dragged across the floor in the bar (see paragraph 63 above). Moreover, these measurements show that the level of noise exceeded the relevant international standards for noise levels (see paragraph 114 above, and compare *Oluić*, cited above, §§ 54-60). The report of 7 March 2008 drawn up by company B-I., which was focused on the improvements to the air-conditioning system in the bar, found that the level of noise was not excessive; that was also confirmed by company E. (see paragraphs 65 and 66 above). However, since there are no indications that at that point any improvements to the noise insulation in the flooring of the bar had been made, and in fact in November 2008 the noise insulation was found to be insufficient (see paragraph 48 above), it could be concluded that the noise created by dragging the chairs across the floor inside the bar remained excessive. Such noise, given the extent to which it exceeded the permitted levels and the fact that it was pervasive in the ordinary regular activities of the customers of the bar, must have disturbed the amenity of the applicant's everyday life.

146. The structure of the noise insulation was examined by company EL. on 24 November 2008 and 13 February 2009 (see paragraphs 48 and 52 above). While the first measurements, taken on 24 November 2008, showed that the noise insulation was not adequate, the second measurements of 13 February 2009 showed that the noise insulation was sufficient. However, the latter findings were not based on any noise insulation standards, since such standards did not exist at the time (see paragraph 52 above). Therefore, the Court has serious doubts as to the relevance of these findings, which were arrived at without any relevant ground.

147. The most recent expert report, drawn up by company G-P. and dated 15 March 2008, found that the level of noise coming from the bar during the night exceeded the permitted limit by 5 dB and that measures for protection from excessive noise from the bar were not in place (see paragraph 69 above).

148. In view of these findings, the Court is particularly mindful that the noise in question originated from a bar which had been operating for more than ten years in the building in which the applicant lives. Neither can it overlook eighty-seven attendances by police in connection with various disturbances created by its customers, which resulted in forty-two actions for minor offences against various individuals for breaches of public peace and order. This same concern was also in the focus of the parliamentary board which examined the applicant's case (see paragraph 101 above).

149. In view of all the above, the Court is satisfied that the disturbance affecting the applicant's home and her private life reached the minimum level of severity which required the authorities to implement measures to protect the applicant from that disturbance (see *Moreno Gómez*, cited above, § 60, and *Mileva and Others*, cited above, § 97).

(ii) Domestic authorities' compliance with Article 8

150. The Court reiterates that in a case concerning environmental issues there are two aspects to the inquiry which may be carried out by the Court. First, the Court may assess the substantive merits of the decision of the domestic authorities, to ensure that it is compatible with Article 8. Secondly, it may scrutinise the decision-making process to ensure that due weight has been accorded to the interests of the individual (see *Hatton and Others*, cited above, § 99), taking into account the positive obligations under Article 8 of the Convention (see paragraph 138 above).

151. In connection with the procedural element of the Court's review of cases involving environmental issues, the Court is required to consider all the procedural aspects, including the type of policy or decision involved, the extent to which the views of individuals (including the applicants) were taken into account throughout the decision-making process, and the procedural safeguards available (ibid., § 104). The Court must therefore first examine whether the decision-making process was fair and such as to afford due respect to the interests safeguarded to the individual by Article 8 (see *Fadeyeva v. Russia*, no. 55723/00, § 105, ECHR 2005-IV).

152. In this respect the Court notes that despite a number of complaints by the applicant and proceedings instituted at the domestic level before the competent administrative authorities, for more than ten years these authorities had failed to adopt appropriate decisions in that regard.

153. The Court observes that in 2002, at the very beginning of the process of the company's opening the bar and the shop, the applicant did not have an opportunity to participate effectively in the administrative proceedings granting the necessary operating licences for the company's business activity (see paragraph 26 above). Thus, following the applicant's complaints, the Administrative Court on 17 December 2009 quashed the decisions of the administrative authorities authorising that activity and remitted the case for re-examination (see paragraphs 40 and 41 above). However, the order made by the Administrative Court remained futile, as it was not effectively complied with, and in fact, according to the material available before the Court, the relevant proceedings are still pending after almost four years. At the same time it remains unclear under what operating licence the bar is still operating, particularly having in mind the findings of the Administrative Inspectorate of 24 November 2010, which noted that the operating licence issued in 2005 was no longer valid (see paragraph 44 above, and compare *Mileva and Others*, cited above, § 99).

154. Furthermore, it is striking that the Ministry of Health declined to examine the applicant's complaints concerning noise insulation measurements in her house, finding that she did not have the standing to submit such complaints (see paragraph 55 above). It is true that this omission was later rectified by the Administrative Court on 6 June 2012

(see paragraph 57 above) but that decision has remained without any relevant effect, since the proceedings are still pending.

155. The Court also notes that although the applicant and her husband complained to the sanitary inspector about excessive noise from the bar in May 2005 (see paragraph 59 above), the officer adopted decisions only three years later, finding that the level of noise was not excessive (see paragraph 67 above). He also refused the applicant the right to participate in the proceedings, on the grounds that she had participated as a party in the concurrent civil proceedings before the Križevci Municipal Court (see paragraph 72 above). Both these decisions were quashed by the Administrative Court, on 22 September and 10 November 2011 (see paragraphs 76 and 77 above) on the grounds that the former had been based on contradictory noise expert reports and the latter had been based on erroneous findings of the sanitary inspector in not allowing the applicant to participate in the proceedings. However, the Administrative Court's judgments were never complied with, as the proceedings before the sanitary inspector are still pending.

156. Thus the Court cannot but concur with the findings of the Administrative Inspectorate of 25 October and 24 November 2010, which reproached the administrative authorities for the inordinate length of proceedings, finding such proceedings both defective and ineffective (see paragraphs 42 and 44 above).

157. As regards the civil proceedings instituted by the applicant, the Court has already noted above the flaws in the manner in which the noise expert report was commissioned and used as evidence in the proceedings before the Križevci Municipal Court (see paragraph 144 above), which was notably the central ground for the dismissal of the applicant's civil action regarding the excessive noise emissions (see paragraph 89 above). However, although the applicant complained to the higher domestic courts that she had had no opportunity to challenge the noise expert report effectively during the trial, the Koprivnica County Court and the Constitutional Court failed to rectify that procedural omission (see paragraphs 91 and 94 above). It was after the Constitutional Court's decision, which was served on the applicant on 28 November 2008, that the applicant brought her complaints before the Court on 29 April 2009.

158. Having regard to the Government's objections that were joined to the merits of the complaint (see paragraph 121 above), the Court considers that the national authorities allowed the impugned situation to persist for more than ten years while the various proceedings before the administrative authorities and the Administrative Court were pending, thus rendering those proceedings ineffective. The applicant also used the relevant and available remedies in the civil courts and brought her application before the Court within the six-month time-limit after she had exhausted these remedies. Therefore, the Court dismisses the Government's preliminary objections

concerning the non-exhaustion of domestic remedies and non-compliance with the six-month time-limit (see *Oluić*, cited above, §§ 36 and 65).

159. In these circumstances, by allowing the impugned situation to persist for more than ten years without finally settling the issue before the competent domestic authorities, the Court finds that the respondent State has failed to approach the matter with due diligence and to give proper consideration to all competing interests, and thus to discharge its positive obligation to ensure the applicant's right to respect for her home and her private life.

160. Accordingly, the Court finds that there has been a violation of Article 8 of the Convention.

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

161. The applicant complained of a violation of her right to peaceful enjoyment of her possessions. She relied on Article 1 of Protocol No. 1 to the Convention.

162. The Government contested that argument.

163. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

164. Having regard to the finding relating to Article 8, the Court considers that it is not necessary to examine whether in this case there has been a violation of Article 1 of Protocol No. 1 (see *Oluić*, cited above, § 70).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

165. The applicant reiterated her complaints, citing Article 5 § 1 of the Convention.

166. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that this part of the application does not disclose any appearance of a violation of the Convention. It follows that it is inadmissible under Article 35 § 3 as manifestly ill-founded, and must be rejected pursuant to Article 35 § 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

167. 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

168. The applicant claimed 299.78 euros (EUR) in compensation for pecuniary damage and EUR 15,000 for non-pecuniary damage.

169. The Government contested the claim.

170. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, having regard to all the circumstances of the present case, the Court accepts that the applicant suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 7,500 in compensation for non-pecuniary damage, plus any tax that may be chargeable to her.

B. Costs and expenses

171. The applicant also claimed EUR 5,749.50 for costs and expenses incurred before the domestic courts and EUR 1,500 for those incurred before the Court.

172. The Government contested that claim.

173. 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 of EUR 7,249 covering costs and expenses under all heads.

C. Default interest

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

FOR THESE REASONS, THE COURT,UNANIMOUSLY,

1. *Decides* to join to the merits the Government's objection as to the exhaustion of domestic remedies and compliance with the six-month time-limit and rejects it;

2. *Declares* the complaints under Article 8 of the Convention and Article 1 of Protocol No. 1 admissible and the remainder of the application inadmissible;

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

4. *Holds* that there is no need to examine the complaint under Article 1 of Protocol No. 1 to the Convention;

5. *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 kuna at the rate applicable at the date of settlement:
(i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 7,249 (seven thousand two hundred and forty-nine 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;

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

Done in English, and notified in writing on 24 April 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President