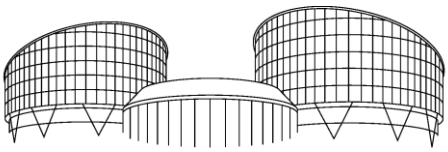

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF TOPČIĆ-ROSENBERG v. CROATIA

(Application no. 19391/11)

JUDGMENT

STRASBOURG

14 November 2013

FINAL

24/03/2014

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

In the case of Topčić-Rosenberg v. Croatia,

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

Isabelle Berro-Lefèvre, *President,*
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 22 October 2013,

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

PROCEDURE

1. The case originated in an application (no. 19391/11) 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 Diana Topčić-Rosenberg ("the applicant"), on 7 March 2011.

2. The applicant was represented by Mr J. Novak, a lawyer practising in Slavonski Brod. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. The applicant alleged, in particular, that as an adoptive mother she had been discriminated against in respect of her right to maternity leave, contrary to Article 14 of the Convention read in conjunction with Article 8 thereof.

4. On 5 March 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962 and lives in Zagreb.

6. On 5 October 2006, by a final decision of the Nova Gradiška Social Welfare Centre (*Centar za socijalnu skrb Nova Gradiška*), the applicant adopted a three-year old child. At that time the applicant was a self-employed businesswoman living in Zagreb.

7. On 16 October 2006 the applicant submitted a request to the Zagreb office of the Croatian Health Insurance Fund (*Hrvatski zavod za zdravstveno osiguranje Područni ured u Zagrebu*) seeking to establish her right to paid maternity leave.

8. On 20 October 2006 the Zagreb office of the Croatian Health Insurance Fund dismissed the applicant's request on the grounds that under the legislation on maternity leave for self-employed entrepreneurs and unemployed mothers ("the Maternity Leave Act"), biological mothers were entitled to paid maternity leave only until the child's first birthday, and adoptive mothers had to be treated equally.

9. The applicant lodged an appeal with the central office (*Direkcija*) of the Croatian Health Insurance Fund against the first-instance decision. She complained that she had been discriminated against as an adoptive mother and a self-employed businesswoman. She relied on the Labour Act, which provided that the adoptive parent of a child under the age of twelve was entitled to paid leave of 270 days, starting from the date of adoption.

10. On 21 March 2007 the central office of the Croatian Health Insurance Fund dismissed the applicant's appeal on the grounds that the Maternity Leave Act had to be applied in the applicant's case as a *lex specialis.* That Act did not provide for maternity leave to be granted to either a biological or an adoptive mother if the child was older than one year.

11. On an unspecified date in 2007 the applicant lodged a complaint with the Administrative Court (*Upravni sud Republike Hrvatske*), challenging the administrative bodies' decisions.

12. On 26 November 2009 the Administrative Court dismissed the applicant's complaint on the grounds that the administrative bodies had correctly applied the Maternity Leave Act as a *lex specialis*, and that under that Act she was not entitled to paid maternity leave since at the time of adoption, her child had been older than one year.

13. On 10 December 2009 the applicant lodged a complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*). She argued that the administrative bodies had interpreted the relevant domestic law in a manner that rendered its provisions ineffective and illusory, since it was extremely rare for somebody to adopt a child under the age of one. In her view, the purpose of paid maternity leave was to provide the adoptive parent and the child with a period of adaptation. Paid maternity leave was accessible to biological mothers after childbirth, and to employees who adopted a child under the age of twelve. In denying her that opportunity, the administrative bodies had discriminated against her as an adoptive mother and a self-employed businesswoman.

14. On 9 February 2011 the Constitutional Court declared the applicant's constitutional complaint inadmissible as manifestly ill-founded.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

A. Relevant domestic law

15. The relevant provisions of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette nos. 56/1990, 135/1997, 8/1998 (consolidated text), 113/2000, 124/2000 (consolidated text), 28/2001 and 41/2001 (consolidated text), 55/2001 (corrigendum), 76/2010, 85/2010) 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."

16. At the material time the relevant part of the Labour Act (*Zakon o radu*, Official Gazette no. 137/2004-consolidated text) provided:

Section 6

"(1) A woman in employment has the right to maternity leave during her pregnancy and while caring for her child after childbirth.

(2) A woman in employment may take maternity leave 45 days before the expected date of childbirth and may remain on such leave until the child's first birthday.

... "

Section 72

"(1) While on maternity leave, an employee has the right to an allowance under the special regulations.

... "

Section 74

"(1) The rights specified by this Act for the purpose of the protection of motherhood and bringing up of children may be exercised, under the same conditions, by an adoptive parent or by a person in whose custody the child has been placed by a decision issued by a body responsible for social welfare.

(2) If the adopted child is older than the age specified in this Act but under twelve years of age, in order to exercise the rights referred to in paragraph (1) of this Article, one of the adoptive parents may take adoption leave of 270 continuous days from the

date of adoption, provided that the adoptive parent's spouse is not the child's biological parent."

17. At the material time the relevant part of the Maternity Leave Act (*Zakon o porodnom dopustu majki koje obavljaju samostalnu djelatnost i nezaposlenih majki*, Official Gazette nos. 24/1996, 109/1997, 82/2001, 30/2004) provided:

Section 2

"(1) A mother who is self-employed has the right to maternity leave during her pregnancy and while caring for her child after childbirth.

...

(3) A mother who is self-employed may take maternity leave 45 days before the expected date of childbirth and may remain on such leave until the child is six months old.

..."

Section 3

"(1) A mother who is self-employed and who took maternity leave under section 2 of this Act may continue to stay on maternity leave until the child's first birthday. For twins, as well as for the third and every further child, she may stay on maternity leave until the children's third birthday.

..."

Section 6

"All rights guaranteed under this Act are applicable under equal conditions to an adoptive parent or a person to whom the competent body for social care has entrusted the care of a child."

Section 8

"(1) During maternity leave ... the persons listed under section 1 of this Act are entitled to the payment of benefits as provided for under the special regulations."

18. On 1 January 2009 the Maternity and Parental Benefits Act (*Zakon o rodiljnim i roditeljskim potporama*, Official Gazette no. 85/2008) came into force, repealing the Maternity Leave Act. The latter, however, remained in force in respect of all proceedings instituted under it.

19. The relevant provisions of the Maternity and Parental Benefits Act read as follows:

Section 7

" ...

(3) The beneficiary of maternity and parental benefits is also any person who has adopted a child under the relevant law and who has health insurance, unless otherwise stipulated under this Act.

..."

Section 12

"(1) An employed or self-employed mother has the right to maternity leave during her pregnancy and while caring for her child after childbirth, and may remain on such leave until the child is six months old, unless otherwise stipulated under this Act.

... "

Section 35

"(1) An employed or self-employed adoptive parent ... has the right to adoption leave under this Act.

(2) The adoptive parent has the right to adoption leave from the time the decision on adoption becomes final."

Section 36

"(1) An employed or self-employed adoptive parent has the right to adoption leave of:

(a) six months, for an adopted child under the age of three;

(b) five months, for an adopted child between the ages of three and five;

(c) four months, for an adopted child between the ages of five and eighteen.

..."

B. Relevant international standards

20. The European Convention on Adoption of Children of 24 April 1967, in so far as relevant, reads as follows:

Article 10

"1. Adoption confers on the adopter in respect of the adopted person the rights and obligations of every kind that a father or mother has in respect of a child born in lawful wedlock.

Adoption confers on the adopted person in respect of the adopter the rights and obligations of every kind that a child born in lawful wedlock has in respect of his father or mother. ... “

21. In its Resolution 1274(2002) on Parental leave, the Parliamentary Assembly stated as follows:

“1. Parental leave was first introduced in Europe more than a century ago as a key element of social and employment policies for women in work at the time of childbirth. Its purpose was to protect the health of mothers and to enable them to look after their children. ... “

22. The Parliamentary Assembly further noted that parental leave was not applied equally in all member States. It therefore urged the Member States, in particular:

“i. to take the necessary steps to ensure that their legislation recognises different types of family structures, if they have not already done so, and, accordingly, to introduce the principle of paid parental leave including adoption leave;

ii. to set up suitable structures for the implementation of parental leave, including adoption leave...”

THE LAW

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

23. The applicant complained that, as an adoptive mother and self-employed businesswoman, she had been discriminated against in respect of her right to maternity leave, contrary to Article 14 of the Convention read in conjunction with Article 8 thereof, which provide:

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. The Government's request to strike out the application under Article 37 § 1 of the Convention

24. The Government informed the Court, by a letter of 29 April 2013, that they proposed to make a unilateral declaration with a view to resolving the issue raised by the applicant. They requested the Court to strike out the application in accordance with Article 37 of the Convention.

25. In their declaration the Government acknowledged that in the instant case there had been a violation of the applicant's right to freedom from discrimination guaranteed by Article 14 of the Convention in conjunction with Article 8 thereof, and stated that they were prepared to pay the applicant 4,000 euros (EUR) to cover any non-pecuniary damage and costs and expenses, plus any tax that may be chargeable to the applicant.

26. The applicant disagreed with the Government's proposal, indicating that she was not satisfied with the terms of the unilateral declaration because the sum proposed by the Government was insufficient to cover all damages and costs and expenses claimed.

27. The Court reiterates that Article 37 of the Convention provides that it may, at any stage of the proceedings, decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

"for any other reason established by the Court, it is no longer justified to continue the examination of the application".

28. To this end, the Court will examine the declaration carefully in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (see *Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI); *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007, and *Sulwińska v. Poland* (dec.) no. 28953/03, 18 September 2007).

29. In the case at issue, the Court observes that although the Government acknowledged in their unilateral declaration that there had been a violation of the applicant's right to freedom from discrimination guaranteed by Article 14 of the Convention in conjunction with Article 8 thereof, they did not offer the applicant adequate redress. The Court considers that the sum proposed in the declaration in respect of non-pecuniary damages and costs and expenses, namely EUR 4,000, does not bear a reasonable relationship of

proportionality to the amounts which the Court would award for both non-pecuniary damages and costs and expenses (see *Konstantin Markin v. Russia* [GC], no. 30078/06, §§ 168 and 171, ECHR 2012 (extracts)).

30. For these reasons the Court finds that the Government have failed to establish a sufficient basis for finding that respect for human rights as defined in the Convention and its Protocols does not require the Court to continue its examination of the case (see, for example, *Krawczak v. Poland (no. 2)*, no. 40387/06, § 21, 8 April 2008*; Malai v. Moldova*, no. 7101/06, § 26, 13 November 2008; *Prepeliţă v. Moldova*, no. 2914/02, § 24, 23 September 2008).

31. That being so, the Court rejects the Government's request to strike the application out of its list of cases under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

B. Admissibility

32. The Court notes that this 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.

C. Merits

1. The parties' arguments

33. The applicant submitted that when deciding about her request for maternity leave, the domestic authorities had interpreted the relevant provisions of the Maternity Leave Act and the Labour Act in a manner that discriminated against her as an adoptive mother and self-employed businesswoman. She pointed out that the Labour Act provided for maternity leave for all employed adoptive mothers of children under the age of twelve. Therefore, in view of the general employment legislation, there was no reason not to recognise her right, under the Maternity Leave Act, to maternity leave after the adoption. Nor was there any justification for treating her differently from biological mothers who were eligible for maternity leave after the birth of their child. Maternity leave was extremely important because it allowed the mother to stay with the child, to have health and social insurance contributions paid for and to receive maternity allowances while not working. In her case, the first several months after the adoption of her daughter had been crucial for the child's integration into the family and the building of mutual trust. However, having been denied the opportunity to take maternity leave, she had been unable to participate fully

in that process. The applicant also pointed out that the difference of treatment between adoptive and biological mothers who were self-employed no longer existed since the enactment of the Maternity and Parental Benefits Act. However, that Act had not been applicable to her situation since she had instituted the relevant proceedings under the previous legislation.

34. The Government made no observations in this respect.

2. The Court's assessment

(a) General principles

35. 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, *E.B. v. France* [GC], no. 43546/02, §§ 47-48, 22 January 2008).

36. 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). 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, § 105, 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 (see *Weller v. Hungary*, no. 44399/05, § 27, 31 March 2009).

37. Although the Contracting States enjoy a certain margin of appreciation in this respect, the scope of the margin of appreciation will vary according to the circumstances, the subject matter and its background, and the final decision as to the observance of the Convention's requirements rests with the Court (see *Konstantin Markin v. Russia* [GC], cited above, § 126).

(b) Application of these principles to the present case

38. The Court notes at the outset that it has already held that a relationship arising from a lawful and genuine adoption may be deemed sufficient to attract such respect as may be due for family life under Article 8 of the Convention (see *Pini and Others v. Romania*, nos. 78028/01 and 78030/01, § 148, ECHR 2004-V (extracts)). It has also held that parental leave and related allowances promote family life and necessarily affect the way in which it is organised. Parental leave and parental allowances therefore come within the scope of Article 8 of the Convention (see *Konstantin Markin*, cited above, § 130).

39**.** In view of the above principles the Court considers that Article 14, taken together with Article 8, is applicable to the case at issue concerning maternity leave and related allowances of an adoptive mother. Accordingly, if a State decides to create a parental or maternity leave scheme, it must do so in a manner which is compatible with Article 14 of the Convention (see, *mutatis mutandis*, *Petrovic v. Austria*, 27 March 1998, §§ 26-29, *Reports of Judgments and Decisions* 1998-II, and *Konstantin Markin*, cited above, § 130).

40. The Court notes that in the case at issue the difference of treatment of the applicant in obtaining the right to maternity leave as a self-employed businesswoman was based on her status of an adoptive mother. In particular, the applicant was denied the right to maternity leave and the related allowances after the adoption of her child, even though biological mothers had such a right from the date of the child's birth until the its first birthday.

41. The domestic authorities interpreted the relevant domestic law, which in principle recognised the right of self-employed adoptive mothers to maternity leave (see paragraph 17 above; section 6 of the Maternity Leave Act) in a manner that also allowed adoptive mothers to take maternity leave until the child's first birthday, irrespective of the time of adoption. Since the applicant's daughter was three-years old when she adopted her, the applicant's request for maternity leave was refused (see paragraph 8 above).

42. The Court considers that when assessing the domestic practice in the present case, in which the authorities refused to grant maternity leave to an adoptive mother, it must take into account two considerations. First, for an adoptive mother the purpose of parental or maternity leave is to enable her to stay at home to look after her child. In this respect she is in a similar situation to a biological parent (see, *mutatis mutandis*, *Petrovic*, cited above, § 36, and *Konstantin Markin*, cited above, § 132). Secondly, the State should refrain from taking any actions which could prevent the development of ties between the adoptive parents and their child and the integration of the child into the adoptive family (see, *mutatis mutandis*, *Wagner and J.M.W.L. v. Luxembourg*, no. 76240/01, §§ 119 and 121, 28 June 2007).

43. The Court observes that the Labour Act, as in force at the relevant time, also recognised that adoptive mothers had the same right to maternity leave as biological mothers. It provided that all the rights granted to biological mothers after childbirth, including the right to maternity leave, would be granted to adoptive mothers from the time the adoption was completed.

44. In this connection, section 66(2) of the Labour Act (see paragraph 16 above) provided that a woman had the right to forty-five days' maternity leave before the expected date of childbirth, and after the birth until the child's first birthday. Section 74 of the Act provided that adoptive parents would have the same rights to the protection of parenthood and the bringing up of children (paragraph 1); and that the adoptive parent of a child who was older than one year but under the age of twelve had the right to paid adoption leave of 270 days, starting from the date of the adoption (paragraph 2).

45. At that time section 2(2) and section 3(1) of the Maternity Leave Act (see paragraph 17 above), as the *lex specialis* on which the domestic authorities relied in the case at issue, provided that biological mothers who were self-employed had a right to forty-five days' maternity leave before the expected date of childbirth, and after the birth until the child's first birthday. Section 6 of the Act provided that adoptive parents were entitled, under equal conditions, to all the rights guaranteed under that Act, but did not specify how they would be applied in the event that a child was adopted after its first birthday.

46. The Court therefore considers that the domestic authorities, when interpreting the relevant provisions of the Maternity Leave Act as granting adoptive mothers the right to maternity leave only until the child's first birthday, applied the relevant law in an excessively formal and inflexible manner. They ignored the general principles recognised under the Labour Act, which took into account the fact that the position of a biological mother at the time of birth corresponds to the adoptive mother's position immediately after adoption.

47. Accordingly, being unable to discern any objective and reasonable justification for the difference in treatment of the applicant as an adoptive mother, in granting her the right to maternity leave after the adoption of her child, and a biological mother, who had such a right from the time of the birth, the Court considers that such a difference in treatment amounted to discrimination.

48. Lastly, the Court observes that all doubts as to the necessity to treat equally the position of a biological mother after childbirth and that of an adoptive mother after adoption, for the purposes of maternity leave, were removed with the enactment of the Maternity and Parental Benefits Act, which entered into force on 1 January 2009 (see paragraphs 18 and 19 above). Although that Act was not directly applicable to the applicant's

situation since she had lodged her request for maternity leave under the previous legislation (see paragraph 18 above), it nevertheless suggests that the Administrative Court, when ruling on the applicant's administrative action in November 2009 (see paragraph 12 above), and the Constitutional Court, which examined the applicant's complaint in February 2011 (see paragraph 14 above), ignored the relevant policies and principles of the domestic legal system.

49. Against the above background, the Court finds that there has been a violation of Article 14 of the Convention taken in conjunction with Article 8 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

50. Lastly, the applicant complained, under Article 6 of the Convention, that she had not had access to a court.

51. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicant claimed 8,874 euros (EUR) in respect of pecuniary damage on account of health and social insurance benefits, maternity allowances, and the related interest, for the period of 270 days, or nine months, for which she had claimed maternity leave. She submitted the relevant decisions of the tax authorities establishing the amount of her salary and the health and social insurance contributions she had been obliged to pay based on her salary, and receipts of payment of those contributions in the period between October 2006 and June 2007.

54. The applicant also claimed EUR 10,000 in respect of non-pecuniary damage on account of the emotional distress she had suffered while having been denied the opportunity to dedicate herself fully to her daughter after

the adoption. She submitted that her daughter had been seriously neglected by her biological parents and that therefore she had needed additional care and attention for her integration into the applicant's family.

55. The Government made no observations in this respect.

56. As regards pecuniary damage, the Court notes that the documents from the case file do not suggest that in the period at issue the applicant suffered any decrease in incomes after she was not granted maternity leave. Accordingly, having found no causal link between the violation found and pecuniary damage claimed by the applicant, the Court dismisses the applicant's claim for pecuniary damage.

57. In respect of non-pecuniary damage, having regard to all the circumstances of the present case, the Court accepts that the applicant has 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 7,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to her.

B. Costs and expenses

58. The applicant also claimed EUR 5,525 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

59. The Government made no observations in this respect.

60. 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 3,500 for costs and expenses in the domestic proceedings and for those in the proceedings before the Court.

C. Default interest

61. 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

1. *Rejects*, by four votes to three, the Government's request to strike the case out of the Court's list of cases;

2. *Declares*, by a majority, the complaint concerning the applicant's alleged discrimination in respect of maternity leave, under Article 14 of the Convention read in conjunction with Article 8 of the Convention, admissible;

3. *Declares*, unanimously, the remainder of the application inadmissible;

4. *Holds*, by four votes to three, that there has been a violation of Article 14 of the Convention read in conjunction with Article 8 of the Convention;

5. *Holds*, by four votes to three,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Croatian kunas at the rate applicable at the date of settlement:
      (i) EUR 7,000 (seven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,500 (three thousand five hundred 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*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 November 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges I. Berro-Lefèvre, K. Hajiyev and E. Møse is annexed to this judgment.

I.B.L.
S.N.

JOINT DISSENTING OPINION OF JUDGES BERRO-LEFÈVRE, HAJIYEV AND MØSE

1. To our great regret we cannot share the reasoning and finding of the majority in so far as they rejected the Croatian Government's request to have the application struck out of the list. There is no doubt in our minds that the Government's unilateral declaration should have been accepted and we shall explain why.

2. We consider that a study of the criteria emerging from our case-law on the subject, as found in particular in the *Tahsin Acar* Grand Chamber judgment (*Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI), should have led the Chamber to accept the declaration and strike the application out of the Court's list as provided for in Article 37 § 1 of the Convention.

3. What factors should the Court take into account in deciding whether a unilateral declaration provides a sound enough basis to conclude that respect for human rights does not require the continued examination of the application?

(a) The existence of well-established case-law.

This is certainly the case here, the Court having already pronounced judgment on several occasions on the question of discrimination in entitlement to parental leave and the corresponding allowances (see *Weller v. Hungary*, no. 44399/05, 31 March 2009, and *Konstantin Markin v. Russia* [GC], no. 30078/06, ECHR 2012 (extracts)).

(b) Certain concessions made by the Government.

According to the *Tahsin Acar* judgment the declaration must contain if not an acknowledgement of full responsibility at least a concession or a commitment.

In the present case it is not in dispute that the Croatian Government explicitly acknowledged, in clear and unequivocal terms, the violation of Article 14 combined with Article 8 of the Convention.

(c) Compensation in an amount similar to that awarded in similar cases.

This last point seems to be the (only) reason why the majority refused to accept the Government's declaration (see § 29 of the judgment).

We note first of all that in the opinion of the majority the applicant did not demonstrate the existence of a causal link between the violation found and the pecuniary damage allegedly suffered, so she could not expect compensation under that head.

The Croatian Government offered to pay the applicant EUR 4,000 in respect of non-pecuniary damage and costs and expenses, based on the amount awarded one year earlier in the *Markin* judgment. It is important to note that in that case the Grand Chamber awarded the applicant EUR 3,000 in respect of non-pecuniary damage.

That being so, it cannot be argued that the sum offered by the Croatian Government was insufficient with regard to the Court's case-law. What we have here is a similar amount in a similar case. We cannot see the justification for the substantial increase in the amount (EUR 7,000) awarded to the applicant in respect of non-pecuniary damage in the present case compared with the Russian case.

That leaves the matter of costs and expenses. In *Markin* the applicant was awarded EUR 3,150 for costs and expenses. In the present case the Croatian Government can be considered to have offered EUR 1,000 under this head. Is the difference between these two sums sufficient in itself to justify the outright rejection of the unilateral declaration considering, on the one hand, that the applicant's submissions show that she only justified the equivalent of approximately EUR 1,050 for her costs and expenses before the domestic courts and, on the other hand, that the Russian case gave rise to two sets of proceedings before the Court, one before the Chamber and one before the Grand Chamber, which indubitably justified the award of higher costs than in the present case?

(d) Whether respect for human rights requires the continued examination of the case.

It should be noted here that a new law on parental leave and allowances entered into force in Croatia on 1 January 2009, remedying the discriminatory provisions contained in the previous law.

4. Already in his 2005 study on the Court's methods Lord Woolf suggested that the Court consider the possibility of striking an application out of its list under Article 37 §1 (c) in the event of unreasonable refusal by an applicant to accept a satisfactory offer of a friendly settlement. The Interlaken Conference in February 2010 invited the States to play a more active part in settling disputes, *inter* alia through friendly settlements and unilateral declarations. Similar encouragement was given in April 2011 and again in April 2012 at the high-level conferences in Izmir and Brighton. A unilateral declaration is a discretionary act which creates obligations and lies on the borderline between State liability and friendly settlement: the State repairs the damage done to an individual by its own means, and the principles underlying the measure (acknowledgement of the violation and reparation of the harm done) are found both in ordinary international law and in the Convention. There is no doubt that such a practice must be encouraged and developed, and we sincerely regret that the Croatian

Government's declaration, which met all the criteria set out in the Court's established case-law, was rejected.

5. In conclusion, having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – we consider that it was no longer justified to continue the examination of the application. Moreover, given the clear case-law on the topic, we think that respect for human rights as defined in the Convention and the Protocols thereto did not require the Court to continue the examination of the application.