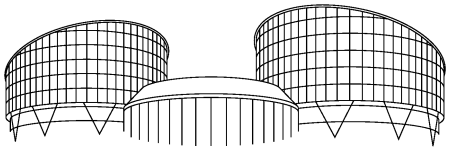

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF SCHMIDT v. LATVIA

(Application no. 22493/05)

JUDGMENT

STRASBOURG

27 April 2017

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Schmidt v. Latvia,

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

Angelika Nußberger, *President,*
Erik Møse,
Faris Vehabović,
Yonko Grozev,
Síofra O'Leary,
Mārtiņš Mits,
Lətif Hüseynov, *judges,*

and Milan Blaško, *Deputy Section Registrar,*

Having deliberated in private on 21 March 2017,

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

PROCEDURE

1. The case originated in an application (no. 22493/05) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a German national, Ms Heide Lydia Friedel Schmidt ("the applicant"), on 10 June 2005.

2. The applicant was represented by Mr G. Zemrībo, a lawyer practising in Riga. The Latvian Government ("the Government") were represented by their Agents, Ms I. Reine and, subsequently, Ms K. Līce.

3. The applicant alleged, in particular, that her rights of access to a court, to a fair hearing, to pronouncement of a judgment and to the principle of equality of arms have been infringed.

4. On 4 December 2009 the application was communicated to the Government.

5. Having been informed of their right to intervene in the proceedings under Article 36 § 1 of the Convention, the German Government did not avail themselves of that right.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1938 and lives in Hamburg.

A. Divorce proceedings

7. On 19 March 1970 the applicant married A.S. From 1980 the couple lived in Hamburg and as of 1986 they resided in a rented apartment. In 1992 they moved to Riga but maintained their place of residence in Hamburg. In Riga the couple acquired an apartment, which was the applicant's registered address in Latvia at that time. In 1999 or 2000 the applicant moved back to Hamburg and stayed in the couple's previous place of residence. The couple maintained contact by telephone and post. On 15 December 2000 they both signed a paper which stated that "with view of regulating their separated life, [the applicant and A.S.] conclude the following agreement". There is no information on the content of that document.

8. According to the documents submitted by the applicant, her residence permit in Latvia expired on 15 January 2002. The Government maintained that the correct date had been 14 May 2003.

9. On 5 December 2003 A.S. brought divorce proceedings concerning his marriage to the applicant before the Riga City Ziemeļu District Court (*Rīgas pilsētas Ziemeļu rajona tiesa*). In his application A.S. stated that the last time he had seen his spouse had been in 2000 and that their marriage was to all intents and purposes dissolved. He also submitted that prior to lodging this claim he had talked to the applicant over the telephone and had informed her of his intention to bring divorce proceedings. He had invited her to submit in writing any pecuniary claims she might have in relation to their common property; however, the applicant had refused to discuss this issue. A.S. also alleged that the applicant's last known place of residence had been their apartment in Riga and that, owing to their disagreements, he could not find out where the court summons should be sent to. Accordingly, A.S. suggested that the applicant should be summoned to the hearing by a notice in the Official Gazette.

10. On 13 January 2004 the Riga City Ziemeļu District Court summoned the applicant to a divorce hearing by sending summons to her previous place of residence in Riga – the apartment in which she used to live with her husband A.S. Upon receiving the information from post authorities that the applicant did not live at the above address, on 27 January 2004 the applicant was summoned to the hearing scheduled for 1 March 2004 with a notice in the Official Gazette. Said hearing was postponed at A.S.'s legal representative's request in order to present additional evidence. With a notice in the Official Gazette of 3 March 2004 the applicant was summoned to a divorce hearing scheduled for 6 April 2004.

11. At the hearing of 6 April 2004 the Riga City Ziemeļu District Court established that the applicant had been summoned to the hearing in accordance with the requirements of the Civil Procedure Law. Therefore, it ruled that the adjudication of the case could take place in her absence. Owing to his poor health, A.S. was represented by a lawyer who stated,

inter alia, that A.S.'s and the applicant's children lived in Greece. After hearing testimony from two witnesses, who stated that they had not seen the applicant since 2000, the court granted the divorce. No appeal was brought against this judgment and it came into force on 27 April 2004.

12. On 29 April 2004 A.S. married A.A. – one of the witnesses who had testified in the divorce proceedings. The following day A.S. passed away.

13. According to the applicant, she learned about the judgment dissolving their marriage when she came to Riga for A.S.'s funeral. The Government did not dispute this fact.

B. German court's refusal to recognise the divorce

14. Following a request by the applicant of 26 May 2004 the Justice Authority of the Free and Hanseatic City of Hamburg (*Freie und Hansestadt Hamburg Justizbehörde*) on 27 July 2004 delivered a declaratory decision (*Feststellungsbescheid*) stating that the requirements for legal recognition of the judgment of the Riga City Ziemeļu District Court had not been met, as the divorced spouse had not been afforded an opportunity to present her case in the divorce proceedings. On the basis of the information before it, the Justice Authority established that A.S. had been aware of the applicant's address in Hamburg. Notably, A.S. had maintained contact with this address in general correspondence and in correspondence concerning the pension he had been receiving from Germany and the Netherlands.

C. Supervisory review in respect of the judgment

15. Following a prior request by the applicant, on 8 November 2004, the President of the Supreme Court submitted an application for supervisory review (*protests*) to the Senate of the Supreme Court asking for the judgment of the Riga City Ziemeļu District Court to be set aside and for the case to be adjudicated anew. He argued that the first-instance court had overlooked some evidence concerning the applicant's domicile and had erred in its application of the procedural rules when summoning the applicant to the hearings. In accordance with section 59(2) of the Civil Procedure Law, A.S. could have placed a notice about the proceedings in a newspaper in Hamburg, where the applicant resided. Besides, as Hamburg had been the applicant's registered place of residence, she should have been summoned to the proceedings via the Ministry of Foreign Affairs. The President of the Supreme Court emphasised that owing to these violations the Justice Authority of the Free and Hanseatic City of Hamburg had refused to recognise said judgment. Lastly, the application for supervisory review stated that the applicant's rights guaranteed under Article 6 § 1 of the Convention had been violated.

16. On 16 March 2005 the Senate of the Supreme Court, sitting in an extended composition, with a final judgment dismissed the supervisory review application and upheld the judgment of the Riga City Ziemeļu District Court. The Senate of the Supreme Court concluded that, since A.S.'s claim had not contained a reference to the applicant's address and since the Riga City Ziemeļu District Court had therefore been unaware of her whereabouts, its actions had been compatible with the procedural requirements of the Civil Procedure Law. Section 59(2) of the Civil Procedure Law imposed no obligation on the court; it only gave the plaintiff a right to publish the court's summonses in other newspapers at his or her own expense. The Senate of the Supreme Court also stated that in the circumstances of the present case a reference to Article 6 of the Convention could not serve as grounds for setting aside the judgment of the first-instance court. It reasoned:

> "The aim of the application for supervisory review – a fresh adjudication of the case permitting the defendant to exercise her procedural rights – can no longer be achieved because the plaintiff, [A.S.], passed away on 30 April 2004, a fact which excludes any further proceedings.
>
> Besides, one should bear in mind that following his divorce form Lydia Heide Friedel Schmidt [A.S.] concluded a new marriage, which, according to section 64(2) of the Civil Law, could not be declared null and void, irrespective of whether the judgment of 6 April 2004 of the Riga City Ziemeļu District Court would be quashed."

D. Disputed facts

17. The parties differ on whether A.S. had been aware of the applicant's place of residence and on whether the applicant had been aware of the divorce proceedings. In relation to the first issue the applicant maintained that she had been residing in the couple's previous place of residence in Hamburg and that the landline telephone there had been used for their telephone conversations. Furthermore, A.S.'s retirement pension and health insurance had been transferred to their shared bank account, as well as to their place of residence in Hamburg. The Government, in turn, relied on the information A.S. had submitted to the Riga City Ziemeļu District Court and also emphasised that no other evidence had been at the court's disposal.

18. With regard to the applicant's knowledge of the divorce proceedings the Government pointed to A.A.'s submissions before the Senate of the Supreme Court. In particular, A.A. had alleged that the applicant had been informed of the divorce proceedings over the telephone. The applicant maintained that even though she had been aware of A.S.'s desire to dissolve their marriage, she had only learned of the divorce proceedings following the death of A.S.

E. Subsequent civil proceedings concerning property rights

19. On 3 November 2005 the applicant brought civil proceedings against A.A. claiming one half of the undivided share of the property that A.S. had acquired during their marriage. She argued that it had been the spouses' common property. On 30 November 2006 the Riga Regional Court granted her claim in full. A.A. appealed against this judgment. The Court has no further information about these proceedings.

II. RELEVANT DOMESTIC LAW

A. Summons to court hearings

20. Section 236(1) of the Civil Procedure Law provides that divorce cases have to be examined in the presence of both parties. However, section 236(4) states that, if the defendant's place of residence is not known or is not in Latvia the case can be adjudicated without the participation of the defendant provided that he or she has been summoned to the court in accordance with the procedures specified by law.

21. Section 54(2) of the Civil Procedure Law at the relevant time provided that, if the party's place of residence was indicated in the application, he or she should be summoned to court by means of a court summons. If the defendant's place of residence was not known, he or she was supposed to be summoned to court by means of a notice in the Official Gazette.

22. Section 59(1) of the same Law further specified that a defendant whose place of residence was unknown or who could not be found at his or her place of residence ought to be summoned to court by means of a notice in the Official Gazette. A court could adjudicate a matter without the participation of the defendant, if no less than one month had passed since the day the summons had been published in the Official Gazette (section 59(4)). Under section 59(2), the plaintiffs had a right to publish the text of the court summons in other newspapers at their own expense. The summons was also supposed to be sent to the defendant's property, if such a property had been indicated by the plaintiff (section 59(5)).

23. Section 60 of the Civil Procedure Law states that, if the defendant's place of residence is unknown, the court may, upon a plaintiff's request, order a search for the defendant.

B. Appeals

24. In so far as relevant, section 413(1) of the Civil Procedure Law provides that a party to a case may lodge an appeal against a judgment of a first-instance court. In accordance with section 415, an appeal may be

lodged within twenty days of the pronouncement of the judgment. An appeal lodged after the expiry of said time-limit shall not be accepted and shall be returned to the appellant.

25. Section 426 provides that an appellate court shall only adjudicate on those claims which have been decided by the first-instance court. It shall adjudicate on the merits of the claim without sending it for re-adjudication to the first-instance court, except in the cases set out in section 427 of that Law. In accordance with section 427(1)(2), irrespective of the grounds of the appeal, the appellate court shall set a judgment aside and send the case for re-adjudication by a first-instance court if the case has been adjudicated in breach of the procedural norms regulating the duty to notify the parties of the time and place of the court hearing.

C. Renewal of the time-limits

26. Section 51(1) of the Civil Procedure Law provides that upon the request of a party to the case a court shall reset a procedural time-limit that has been missed if it finds the reasons for the delay justified.

27. Section 53(2) states that a request for renewal of a procedural time-limit has to be accompanied by the documents required for carrying out the specific procedural action and by the grounds for renewal of the time-limit. In accordance with section 53(4), a refusal to renew the procedural time-limit may be appealed against by lodging an ancillary complaint.

D. Supervisory reviews of court rulings

28. Sections 483 and 484 of the Civil Procedure Law regulate the possibility of submitting an application for supervisory review of a ruling (a judgment or a decision) that has taken effect. Under section 484 the grounds for submitting an application for supervisory review are substantive breaches of material or procedural legal provisions in cases that have only been adjudicated by a first-instance court, provided that (i) no appeal in accordance with the law has been lodged against the ruling by the parties to the case for reasons beyond their control or (ii) the rights of State or municipal institutions or the rights of persons who are not parties to the case have been affected by the ruling.

29. At the material time section 483 provided that such an application for supervisory review had to be brought before the Senate of the Supreme Court within ten years of the ruling taking effect and that it could be submitted, *inter alia*, by the President of the Supreme Court.

E. Termination of court proceedings

30. Section 223(1)(7) of the Civil Law provides that the court shall terminate court proceedings if one of the parties to a case dies and the nature of the dispute does not permit the rights to be assumed by another person.

F. Rules concerning dissolution and annulment of marriage

31. Section 64(1) of the Civil Law provides that a marriage shall be annulled if at the time it was concluded that one of the spouses had already been married. However, section 64(2) states that a second marriage cannot be annulled if prior to the rendering of the court's judgment the first marriage has ended due to death, divorce or annulment.

32. Section 238(1) of the same Law provides that in cases regarding divorce or annulment of marriage claims arising from family legal relationships shall be adjudged concurrently. Such claims include disputes regarding joint family homes and households, personal articles and division of the marital property.

33. Under section 239(1) of the same Law, in matters regarding dissolution or annulment of marriage a court shall acquire evidence on its own initiative, especially for deciding on issues which affect the interests of a child.

34. Section 240(1) provides that the court shall, on its own initiative, postpone the examination of a divorce case for the purpose of restoring the cohabitation of spouses or facilitating a friendly resolution of the case. Upon a request of a party the examination of the case for this purpose may be postponed repeatedly. Section 240(2), as worded at the relevant time, provided that the court may not postpone the examination of a case if the parties have lived separately for more than three years and both parties object to the postponement.

G. Declaration of residence

35. The Declaration of Residence Law was enacted on 20 June 2002 and entered into force on 1 July 2003. Its section 1 provides that the purpose of the Law is to ensure that every person is reachable in his or her legal relations with the State or local government. Section 4(1) provides that in a case of a change of the place of residence, the person concerned has to declare his or her new address within one month. Section 6(1), as worded at the time the Law was enacted, provided that the duty to declare an individual's residence applied to citizens of Latvia and "permanently resident non-citizens" (*nepilsoņi*) of Latvia; stateless persons who had received an identification document in Latvia; foreigners and stateless persons who had received a residence permit; and refugees.

36. The procedure regarding the issuing and registration of residence permits at the relevant time was regulated by the Cabinet of Ministers regulation no. 417 (1997) which was in force until 18 May 2001. It provided that in order to receive a residence permit, a person should fill in an application form indicating his or her place of residence in Latvia. By signing the application form, a person undertook to inform the Office of Citizenship and Migration Affairs about "any changes in the information mentioned in the application".

III. RELEVANT INTERNATIONAL LAW

37. Article 18(1) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility provides that where a defendant is habitually resident in a State other than the member State where the action was brought does not enter an appearance, the court with jurisdiction shall stay the proceedings so long as it has not been shown that the defendant was able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him or her to arrange for his or her defence, or that all necessary steps were taken to this end.

38. Article 22(b) of the same Regulation provides that a judgment relating to a divorce, legal separation or marriage annulment shall not be recognised where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable the defendant to arrange for his or her defence unless it had been determined that the defendant accepted the judgment unequivocally.

IV. LAW AND PRACTICE IN THE COUNCIL OF EUROPE MEMBER STATES

39. The Court has examined practices concerning service procedures in civil proceedings in thirty-one Council of Europe member States, namely Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, France, Germany, Hungary, Italy, Liechtenstein, Lithuania, Luxembourg, the former Yugoslav Republic of Macedonia, Malta, the Republic of Moldova, Montenegro, the Netherlands, Poland, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Sweden, Turkey, Ukraine and the United Kingdom.

40. In all of the member States surveyed, when a plaintiff lodges a civil action, he or she is required to indicate the address of the defendant. Sometimes also some additional information, such as a telephone number, a

fax number, an email address, or an identification-document number is required.

41. The plaintiff is obliged to attempt to establish the defendant's address in at least eighteen of the member States surveyed. The plaintiff has to demonstrate, sometimes with a certificate from a public authority, the steps and measures taken. Such steps may include consultation of administrative registers, communication with his or her legal representative, communication with the landlord or caretaker of the former place of residence, the defendant's relatives, friends and last employer, as well as checking the movements on common bank accounts, contacting the local social welfare office, and so forth.

42. In some countries measures are in place to ensure that the plaintiff does not withhold the defendant's address. For example, a plaintiff is required to give an official declaration that he or she does not know the defendant's address abroad, and provision of false information in that declaration is a criminal offense (Bulgaria). If a plaintiff has acted in bad faith, he or she is required to cover the costs and expenses of the proceedings, even in case of favourable outcome of the proceedings (the Republic of Moldova).

43. In at least fifteen of the member States surveyed it is the domestic courts that are required to conduct the search for the defendant's address. In those countries courts consult population registers, social-security databases, other public registers and databases, and in some countries social networks too. A court may request information from the relevant authorities (such as the Ministry for Internal Affairs, the police – notably via police spot checks or investigations – public prosecutors, the tax authorities, municipal authorities etc.), family members, neighbours, landlords or other private entities such as professional associations, banks, and so forth. In certain member States the domestic courts are expressly required to act with thorough diligence. For instance, in Slovakia and Spain the courts must exhaust all possible measures to reach the defendant.

44. In at least eight member States surveyed steps to establish the defendant's place of residence are required from both the plaintiff and the court. In addition, in some States the duty of establishing the defendant's address is placed on some other authorities – a prosecutor (Belgium) or a bailiff (France and Luxemburg). The sufficiency of the steps taken is assessed by the court.

45. When a defendant cannot be reached in any other way, in twenty of the member States surveyed service can be carried out via a public announcement (public notice boards, publication in a newspaper or electronic media). Usually this type of service is considered as a means of last resort and frequently it is used in combination with some other measures. In thirteen of those member States public announcement can be effected via publication in a newspaper distributed in the country, such as

newspaper with a high circulation or a newspaper which provides the most reliable way of reaching the defendant. In seven of the member States surveyed (Estonia, Germany, Malta, the Netherlands, Romania, Spain, and Ukraine) a notice may be published in the official gazette but in three of those (Germany, Romania, and Spain) it must be complemented with other means of public service.

46. When a defendant resides in the particular country, service will be attempted at his or her registered or last known address in at least eighteen member States, even if it is likely that he or she no longer resides there. However, the registered address is sometimes only a presumption that can be rebutted (for example Italy, Netherlands, Russia). The fact that the defendant has a registered address in the country, when it is likely that he or she no longer resides there, may not be sufficient for valid service of documents (for example Germany, Poland). In other terms, the service is considered valid if it is made at the place where there is a serious possibility that document will be handed over to the recipient.

47. When the residence of the defendant cannot be identified, in sixteen of the member States surveyed a special representative can be appointed by the court. This representative has the same rights and duties as a legal representative and acts in the best interests of the defendant. In at least two countries (Poland, Sweden) the representative can also be required to try to identify the place of residence of the absent party.

48. In at least twenty-two of the member States surveyed procedures exist that allow, in certain circumstances, for the judgment given in absence to be quashed.

If the defendant resides at an unknown address abroad, the notification may involve such measures as public announcement *and* appointment of a special representative (Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Hungary, Malta, Romania); public announcement *or* appointment of a special representative (Poland, Sweden); transmission of the summons to the office of the prosecutor (Belgium, Italy, Netherlands) or the Ministry of Foreign Affairs (Italy, Luxemburg, France).

THE LAW

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

49. The applicant complained that the divorce proceedings had been incompatible with the requirements of a fair trial, as she had been deprived of access to court, a fair hearing, pronouncement of a judgment and equality of arms. The applicant submitted that this contravened the requirements of Article 6 § 1 of the Convention, which, in so far as relevant, reads:

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

A. Admissibility

1. The parties' submissions

(a) The Government

50. The Government disputed the admissibility of this complaint on various grounds. At the outset they argued that the applicant had not exhausted the available domestic remedies, of which there had been two. First, the applicant could have contested the provisions of the Civil Procedure Law setting out the procedure for summoning parties to hearings before the Constitutional Court. Second, the applicant should have lodged an appeal alongside a request for renewal of the procedural time-limit, against the judgment of 6 April 2004 of the Riga City Ziemeļu District Court, after she had learned about it. The Government argued that, taking into account the particular circumstances of the case and the domestic courts' case-law on the subject matter, there were firm reasons to believe that had the applicant lodged such a request, the court would have granted it. In that connection the Government relied on a letter of 13 April 2010 by the President of the Supreme Court, addressed to the Government's Agent, stating that a plaintiff's concealment of a defendant's place of residence and a court's failure to inform a defendant of a hearing could serve as the grounds for requesting a renewal of a procedural time-limit. The Government submitted that the examination of this request would not have been affected by the fact that the other party to the case had died. The Government also emphasised that a refusal to renew said time-limit would still have been amenable to appeal through an ancillary complaint. Moreover, this remedy had been directly available to the applicant.

51. The Government also argued that, in contrast to the possibility of bringing an appeal, the power of the President of the Supreme Court to lodge an application for supervisory review was a discretionary and extraordinary remedy. Besides, it was limited to the procedural issues raised by the President of the Supreme Court. Hence, the applicant had not been required to use it. On these grounds, the Government submitted that, even if the Court dismissed the non-exhaustion plea, the applicant would have, nonetheless, missed the six-month time-limit, which ought to be calculated from the beginning of May 2004 when the applicant had learned of the judgment on her divorce.

52. Lastly, the Government argued that the applicant's absence from the hearing had not caused her significant disadvantage requiring examination of the present case on its merits. A.S. had only requested dissolution of their marriage and, hence, the court could not have examined any other claim,

such as division of the spouses' common possessions. It was beyond doubt that the proceedings could have only resulted in divorce and it was not clear what arguments the applicant would have wished to put forward had she been present at the hearing. The applicant's complaint before the Court was motivated solely by pecuniary interest. Nonetheless, on the basis of A.S.'s will the applicant had inherited part of his possessions located in Latvia. Moreover, by the judgment of the Riga Regional Court of 30 November 2006 the applicant had reclaimed from A.A. some other assets and property she had regarded as the spouses' common possessions. Accordingly, the Government invited the Court to dismiss the complaint on the basis of Article 35 § 3 (b) of the Convention.

(b) The applicant

53. The applicant contested these arguments. With regard to the possibility of bringing a complaint before the Constitutional Court the applicant noted that the violation of her rights had not stemmed from the applicable legal provisions but rather from the erroneous conclusion of the domestic courts that her address had been unknown.

54. In relation to the possibility of requesting a renewal of the procedural time-limit for lodging an appeal, the applicant submitted that the fact that A.S. had already passed away should be taken into account. According to the applicant, this fact would have served as the grounds for dismissing the request for renewal of the procedural time-limit, as it had formed part of the reasoning of the Senate of the Supreme Court when dismissing the supervisory review application of the President of the Supreme Court. The applicant also noted that the Government had provided no case-law proving that this remedy was in fact effective, and she herself was unaware of such cases.

55. The applicant also argued that she had used an alternative remedy which she had regarded as more effective and had requested that the President of the Supreme Court submit an application for supervisory review. Moreover, this application had in fact been submitted and the procedural breaches complained of had been assessed by the Senate of the Supreme Court. The applicant argued that she had not been required to use one specific mechanism from the two available domestic remedies and that she could not be prevented from lodging the application with the Court on such basis.

56. In the alternative, the applicant argued that both of these remedies lacked the requisite standard of accessibility and effectiveness and that neither of them could be regarded as a remedy that should be exhausted prior to lodging an application with the Court. In any case, the applicant considered that the six-month time-limit should be calculated from the final decision actually taken with regard to her case, namely the judgment of the Senate of the Supreme Court of 16 March 2005.

57. Lastly, with regard to the alleged lack of significant disadvantage, the applicant contended that the Government's assertions about the outcome of the case were entirely speculative. She pointed to section 240(1) of the Civil Procedure Law pursuant to which the court had had an obligation to postpone the examination of the case for the purpose of restoring the cohabitation of spouses or facilitating a friendly resolution of the case. It could not be excluded that either of those purposes would have been attained. In addition, the case had also had a notable pecuniary effect, as she had lost the right to be recognised as A.S.'s heir and the failure to divide the joint property of spouses had resulted in the applicant having lost a share of those possessions.

2. The Court's assessment

(a) Non-exhaustion of domestic remedies

58. The Court reiterates that under the terms of Article 35 § 1 of the Convention it may only examine complaints in respect of which domestic remedies have been exhausted and which have been submitted within six months of the date of the "final" domestic decision (see *Slivenko and Others v. Latvia* (dec.) [GC], no. 48321/99, § 68, ECHR 2002-II (extracts)). The general principles pertaining to the exhaustion of domestic remedies are set out in *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014.

59. The Court emphasises that the obligation under Article 35 requires only that an applicant should have normal recourse to the remedies likely to be effective, adequate and accessible. In particular, the only remedies which the Convention requires to be exhausted are those that relate to the breaches alleged and are at the same time available and sufficient (see *Sejdovic v. Italy* [GC], no. 56581/00, § 45, ECHR 2006‑III). To be effective, a remedy must be capable of directly redressing the impugned state of affairs and must offer reasonable prospects of success (see *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, § 223, ECHR 2014 (extracts)). It is incumbent on the Government claiming non-exhaustion to establish that these various conditions were met. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there were special circumstances absolving him or her from the requirement. The rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism; in reviewing whether the rule has been observed, it is essential to have regard to the particular circumstances of the individual case (see *Selmouni v. France* [GC], no. 25803/94, §§ 76-77, ECHR 1999-V).

60. The Court will examine in turn the mechanisms which, according to the Government, could have provided more success to the applicant's grievances.

(i) Constitutional Court proceedings

61. In relation to the possibility of lodging a constitutional complaint, the Court considers that in the present case it would not have constituted an effective means of protecting the applicant's rights. The Court has already examined the scope of the Constitutional Court's review in Latvia and has concluded that the procedure of an individual constitutional complaint cannot serve as an effective remedy if the alleged violation results from an alleged legislative gap (see *Mihailovs v. Latvia*, no. 35939/10, § 157, 22 January 2013) or erroneous application or interpretation of a legal provision which, in its content, is not unconstitutional (see *Elberte v. Latvia*, no. 61243/08, §§ 79-80, ECHR 2015 and the cases cited therein). As the applicant's complaint in essence related to the allegedly erroneous interpretation and application of domestic law, and the Government has not specified in what manner the invoked remedy would in practice be effective for the purposes of the present complaint, the Court considers that the applicant was not required to avail herself of the remedy proposed.

(ii) Proceedings under the Civil Procedure Law

62. The Government contended that the applicant had a possibility of requesting renewal of the procedural time-limit for lodging an appeal after the applicant had learned about the judgment dissolving her marriage (see paragraph 50 above). The applicant argued that she had used an alternative remedy, namely, a request asking the President of the Supreme Court to submit an application for supervisory review (see paragraphs 54-55 above).

63. As a counterpart to the applicant's obligation to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances, the Court has considered that there is no obligation to have recourse to remedies which are inadequate or ineffective (see *Mocanu and Others*, cited above, § 223). The Court reiterates its extensive case-law to the effect that an application for review of a final decision or similar extraordinary remedies and remedies the use of which depend on the discretionary powers of public officials cannot, as a general rule, be considered as effective remedies within the meaning of Article 35 § 1 of the Convention (see, for example, *Denisov v. Russia* (dec.), no. 33408/03, 6 May 2004; *Gurepka v. Ukraine*, no. 61406/00, § 60, 6 September 2005; and *Galstyan v. Armenia*, no. 26986/03, § 40, 15 November 2007). It follows that the applicant would not be required to exhaust such a remedy.

64. In the present case the applicant's principal grievance under the Convention concerned the manner in which she had been summoned to the divorce proceedings. After the applicant learned about the judgment

dissolving her marriage, she had a possibility to submit a request for a renewal of the procedural time-limit for lodging an appeal (see paragraphs 26-27 above). When examining such a request, the domestic court would be required to assess the applicant's Convention complaints (see the Governments argument to that regard, paragraph 50 above), even though the plaintiff's death would have prevented to attain a fresh adjudication of the divorce matter (see paragraph 30 above). The applicant, instead, choose to use an extraordinary remedy by requesting the President of the Supreme Court to trigger the supervisory review procedure. That review in her case led to the assessment of the applicant's principal grievance under the Convention (see paragraph 16 above), even though, as stated above, the Senate of the Supreme Court came to a conclusion that reopening of the contested proceedings would not be possible due to the plaintiff's death. The comparison of the two mechanisms shows that in the particular circumstances of the case the procedure of a renewal of the procedural time-limit for lodging an appeal, if invoked, would not be more efficient in terms of raising and addressing the applicant's principal grievance under the Convention as the extraordinary remedy already used by the applicant where it was reviewed by the highest domestic court.

65. By reiterating that the use of another remedy which has essentially the same objective is not required (see *O'Keeffe v. Ireland* [GC], no. 35810/09, § 109, ECHR 2014 (extracts)) and by referring to its conclusions made in paragraphs 68-70 below, the Court concludes that the applicant was not required to avail herself of the request for a renewal of the procedural time-limit which had essentially the same objective for the applicant as the triggered procedure and dismisses the Government's objection concerning non-exhaustion of the domestic remedies.

(b) Compliance with the six-month rule

66. The pursuit of remedies which fall short of the requirements of Article 35 § 1 of the Convention will have consequences for the identification of the "final decision" and, correspondingly, for the calculation of the starting point for the running of the six-month rule (see *Sapeyan v. Armenia*, no. 35738/03, § 21, 13 January 2009). Where it is clear from the outset that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant (see *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, § 86, ECHR 2014 (extracts)). Therefore, extraordinary remedies, including the application for review should not, in principle, be taken into consideration for the purposes of the six-month rule.

67. However, it is a different matter where this remedy has actually been exercised (contrast with *Dāvidsons and Savins v. Latvia*, nos. 17574/07 and 25235/07, § 71, 7 January 2016), bearing in mind that it is of no

importance whether it has turned out to be successful (see *Öztürk v. Turkey* [GC], no. 22479/93, § 45, ECHR 1999 VI). Namely, the running of the six-month period will be interrupted only in relation to those Convention issues which served as grounds for review of a final decision or reopening, and were it was the object of examination before the extraordinary appeal body (see, *mutatis mutandis*, *Sapeyan*, cited above, § 24).

68. In the present case, the Court observes that, following the applicant's request in which she in essence complained that her rights of access to a court had been infringed, the President of the Supreme Court triggered the supervisory review procedure (see paragraph 15 above). An application for supervisory review was examined on its merits by the Senate of the Supreme Court. In particular, the application dealt with the manner in which the applicant had been summoned to the proceedings and the alleged resulting breaches of her procedural rights – exactly the issue which forms the essence of the applicant's complaint before this Court (contrast with the case of *X and Others v. Latvia* ((dec.), no. 27773/08, §§ 9-11), where the application for supervisory review had concerned completely different issues than those subsequently brought before the Court). Accordingly the Senate of the Supreme Court as a court of last instance sitting in an extended composition delivered a final and binding judgment with regard to this particular applicant's complaint.

69. The Court further notes that application for supervisory review proceedings in general seeks to review substantive beaches of material and procedural legal provisions (see paragraph 28 above). Had the Senate concluded that the applicant's summoning to the proceedings had not been in compliance with the domestic law, it is not excluded that in such a case the applicant could have subsequently used another form of a compensatory remedy (see to this regard *Dreiblats v. Latvia* (dec.), no. 8283/07, 4 June 2013).

70. To sum up, the Court reiterates that, even though the application for supervisory review could not lead to the reopening of the divorce proceedings, the domestic courts were provided with the opportunity of addressing the core of the human rights issues that the applicant subsequently brought before the Court and they addressed them.

71. As a consequence, in the particular circumstances of the case, and bearing in mind that Article 35 of the Convention must be interpreted with some flexibility, the Court considers that the judgment of the Senate of the Supreme Court of 16 March 2005 should be taken into account in calculating the six-month time-limit (compare *Sapeyan*, cited above, §§ 25-27, where the running of the six-month time-limit was considered to have restarted only in relation to the complaints that had been addressed within the extraordinary appeal proceedings).

(c) Significant disadvantage

72. The Court points out that the purpose of the "significant disadvantage" admissibility criterion is to enable more rapid disposal of unmeritorious cases and thus to allow it to concentrate on its central mission of providing legal protection of the rights guaranteed by the Convention and its Protocols (see *Gagliano Giorgi v. Italy*, no. 23563/07, § 54, ECHR 2012 (extracts)). The main element of the criterion set by Article 35 § 3 (b) of the Convention is whether the applicant has suffered any significant disadvantage, the assessment of which may be based on criteria such as the financial impact of the matter at issue or the importance of the case for the applicant (see *Adrian Mihai Ionescu v. Romania* (dec.), no. 36659/04, 1 June 2010, and *Korolev v. Russia* (dec.), no. 25551/05, 1 July 2010).

73. In relation to the present case, the Court observes that the applicant's civil status was determined in her absence and, it is argued, without her having had any knowledge of the proceedings. The parties to the case do not dispute the fact that the applicant had learned that her marriage had been dissolved and that A.S. had remarried only when she came to what she thought was her husband's funeral (see paragraph 13 above). Thus, the Court considers that the importance of the case for the applicant and its effects on the applicant's private and family life cannot be underestimated.

74. The Court also considers that it could not be excluded that the divorce proceedings would have pecuniary implications for the applicant. Following the dissolution of their marriage the applicant could no longer be considered as A.S.'s heir and could not claim the portion of the estate reserved to the spouse of which she could not otherwise have been disinherited. The Government have referred to A.S.'s will, which allegedly leaves some property to the applicant; however, they have not argued that the property allocated by the will is equivalent to the said reserved portion.

75. Accordingly, there are no grounds for concluding that the applicant has suffered no significant disadvantage. The Court therefore does not find it appropriate to dismiss the present application with reference to Article 35 § 3 (b) of the Convention and rejects the Government's objection.

(d) Conclusion as to the admissibility

76. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Having dismissed the Government's above objections, the Court further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

77. The applicant submitted that she had been deprived of her right of access to court, as she had not received the plaintiff's claim or summonses to the hearings. Hence, she had been unaware of the divorce proceedings. As a result, she had been deprived of other procedural rights emanating from the right to fair trial, such as the right to take part in the proceedings, present her arguments and evidence, consult the case file, contest the arguments and evidence of the other party, appeal against the judgment, and so forth. Also her right to an oral hearing and right to equality of arms had been violated. Besides, the conclusion of the Senate of the Supreme Court that Article 6 of the Convention had not been applicable to the instant case, merely because it had viewed the case as having no prospects of success, had constituted a serious violation of her right to a fair trial.

78. The plaintiff's statement in the claim that he had not known the applicant's place of residence had been untruthful. Had the national courts exercised the necessary diligence, they would have established the applicant's residence. The plaintiff in his claim had referred to "ongoing misunderstandings between the spouses" and A.A. during her testimony mentioned that every time after a telephone conversation with the applicant A.S. had not felt good. That indicated that A.S. had had continuous contact with the applicant. Thus, the national courts had erred in concluding that her place of residence had been unknown. The court could have ordered the plaintiff to make another telephone call in order to clarify her place of residence. Besides, as there had also been alternative means – public notice in another newspaper or placing the applicant on the list of missing persons – it could not be concluded that the domestic courts had used all available means and exercised the necessary diligence in establishing her place of residence.

79. The applicant also emphasised the specific nature of divorce proceedings and the requirement under section 236(1) of the Civil Procedure Law that divorce proceedings be conducted in the presence of both parties. She also referred to section 239(1) of the Civil Procedure Law, which stated that in divorce proceedings the court shall acquire evidence on its own initiative. According to the applicant, this provision was also applicable to evidence pertaining to a defendant's place of residence. Hence, in divorce proceedings the diligence required of national courts was even higher than with regard to other civil proceedings.

80. The applicant also noted that her residence permit had already expired on 15 January 2002. As the Declaration of Residence Law and the Cabinet of Ministers regulation no. 417 (1997) had been applicable only to

residents of Latvia, there had been no legal obligation for the applicant to register the change of her place of residence with the State. In any case, prevention of the exercise of the right to fair trial on the grounds of a failure to comply with such an obligation would be disproportionate.

81. Lastly, the applicant submitted that under Article 22(b) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility the judgment dissolving her marriage was illegal in all European Union States.

(b) The Government

82. The Government contested these arguments. They submitted that even though normally in divorce proceedings the participation of both parties was required, an exception was provided for situations where a party's place of residence was unknown. In practice, when a defendant's address was not indicated, the courts would consult the population register. Only in cases when the defendant did not reside at the officially registered place of residence and no other information was at the court's disposal, was he or she summoned via a notice in the official gazette.

83. The population register had also been consulted in the present case and the summons had first been sent to the address indicated there. Referring to the Declaration of Residence Law the Government emphasised that it had been for the applicant to amend the population register of any changes in her domicile, if she had wanted to ensure that she could have been reached by the State authorities. Such an obligation had also emanated from the Cabinet of Ministers regulation no. 417 (1997) (see paragraph 36 above).

84. Considering that A.S.'s claim had contained no reference to the applicant's domicile, the manner in which the applicant had been summoned to the hearings had complied with domestic law. Contrary to the circumstances in *Miholapa v. Latvia*, no. 61655/00, 31 May 2007, the domestic court had had no information at its disposal as to the possible whereabouts of the applicant. Even if the applicant's place of residence had been known to A.S., the court had not been aware of it. The Civil Procedure Law did not set out an obligation or even a possibility for the national courts to instruct the plaintiff to make a telephone call in order to clarify the residence of the defendant. Besides, section 239(1) of the Civil Procedure Law was only applicable to the evidence pertaining to the merits of a case, above all, when adjudicating the issues affecting the interests of a child. No obligation to search for the defendant's address could be inferred from this provision. In addition, a plaintiff's right to publish a notice in a different newspaper or a possibility to request that a person be included on the list of missing persons could only be exercised upon the plaintiff's own initiative and imposed no obligation on the court.

85. In civil proceedings parties were obliged to exercise their rights and obligations in good faith. In the light of that, having received a civil claim a court should not be concerned with the question of whether the information provided in the claim is truthful, in particular with regard to the defendant's place of residence. Therefore, a court should not be held liable when a plaintiff disregarded this principle, provided it had not been in a *prima facie* position to establish the dishonesty. It was primarily for the litigants to initiate and facilitate civil proceedings; therefore, a court had to enforce the procedural norms with due formalism, the absence of which might jeopardise the fairness of judicial proceedings.

2. The Court's assessment

(a) General principles and the member State practice

86. The Court reiterates that the Convention system requires the Contracting States to take the necessary steps to ensure the effective enjoyment of the rights guaranteed under Article 6 of the Convention (see *Dilipak and Karakaya v. Turkey*, nos. 7942/05 and 24838/05, § 77, 4 March 2014). It is not the Court's task to indicate the preferred ways of communicating with litigants, the domestic courts being better placed to assess the situation in the light of practical circumstances (see *Gankin and Others v. Russia*, nos. 2430/06, 1454/08, 11670/10 and 12938/12, § 35, 31 May 2016). Nonetheless, it remains the responsibility of the Contracting States to ensure that the domestic authorities have acted with the requisite diligence in apprising the litigants of the proceedings so that their right to fair trial is not jeopardised. That responsibility coexists with the duty on the applicants not to contribute to creating situations of which they complain before the Court, especially when proceedings in several jurisdictions are involved (see *Avotiņš v. Latvia* [GC], no. 17502/07, § 124, ECHR 2016 *Avotiņš*, cited above).

87. The requirement of diligence can also be discerned from the Court's case-law. Thus, in the case of *Övüş v. Turkey* (no. 42981/04, §§ 48-51, 13 October 2009) the Court noted that no proof had been provided that the applicant, who at the relevant time had resided in Germany, had received a notice to attend a court hearing in Turkey through the Turkish consulate in Frankfurt.

88. In the case of *Dilipak and Karakaya* (cited above, §§ 81-85 and 103-105) the Court concluded that the domestic authorities had not taken the actions that could legitimately and reasonably have been expected of them. Furthermore, in the case of *Gyuleva v. Bulgaria*, no. 38840/08, §§ 40-41, 9 June 2016, where the domestic court had attempted to summon the applicant through the mayor of the village where she had lived but the mayor had failed to serve the summons on the applicant, the Court noted that the domestic court could have attempted to serve the summons on the

applicant at her place of work or at her brother's address, or it could have attempted to resolve the contradictions in the information available to the authorities as to the applicant's registered address.

89. In addition, in both of the aforementioned cases the Court criticised the domestic authorities for resorting to a notification in the official gazette prior to exhausting all other available avenues (see *Dilipak and Karakaya*, § 83, and *Gyuleva*, § 41, both cited above). Similar criticism was voiced in the case of *Zavodnik v. Slovenia*, no. 53723/13, §§ 78-79, 21 May 2015, where the Court observed that the domestic court had published a notification only in the official gazette without using the opportunity, provided in the domestic law, to place a more targeted notice in other mass media. It also noted that it would not have been disproportionate to require additional steps to have been taken to inform the parties of the hearing (ibid, §§ 78 and 81).

90. The Court refers here to the comparative law research concerning service procedures in thirty-one of the Council of Europe member States (see paragraphs 39-48 above). In all of the member States surveyed the plaintiff is required to indicate the defendant's address. But when the address of the defendant is unknown, in the majority of the member States surveyed there is a party – the plaintiff, the court, a prosecutor, a bailiff or a special representative – on whom an obligation is placed to invest reasonable effort in establishing the defendant's place of residence. The obligation of the domestic courts to act on their own initiative in order to establish the defendant's address varies greatly amongst the member States, with some countries requiring that all possible measures to reach the defendant be exhausted (see paragraph 43 above). When the obligation to identify the defendant's address is placed on the plaintiff or another person, he or she is usually required to substantiate before the court that the steps taken have been sufficient. The Court notes that regardless of which of the approaches is chosen, it is the responsibility of the Contracting States to ensure that the domestic authorities act with due diligence in ensuring that the defendants are informed of the proceedings against them and are given the opportunity to appear before the court and defend themselves.

(b) Application of those principles in the present case

91. In the present case the applicant, who no longer resided in Latvia, was notified of the divorce proceedings via a summons that was sent to her previous place of residence in that State. That address at the material time was also the residence of the plaintiff, and it was evident from the information provided to the domestic court by A.S. that the applicant no longer resided there (see paragraphs 9-10 above). As the applicant could not be reached, the court published two notifications in the Official Gazette. The domestic court resorted to this procedure on the basis of the plaintiff's allegation that he was unaware of the applicant's place of residence.

92. At the outset the Court notes the Government's assertion that parties to a case are required to act in good faith and that the domestic courts have no obligation to verify their submissions concerning the respondents' place of residence (see paragraph 84 above). It appears that in Latvia the domestic law did not require the domestic courts to take reasonable steps in order to establish the defendant's place of residence of their own motion. They were also not required, as an alternative, to verify whether any, let alone sufficient, steps for identifying the defendant's address had been taken by the plaintiff, or to provide any safeguards in a situation where the plaintiff had no interest in establishing the defendant's place of residence. Nor was such an obligation placed on any other person or official. The supplementary measures for informing a party of proceedings contained in the Civil Procedure Law could only be resorted to at the initiative of the plaintiff.

It seems that the domestic system also has not provided any safeguards for situations where the plaintiff, as appears to have been the case here, was concealing such information from the court. The Court emphasises that the important task of informing the respondents of the proceedings brought against them cannot be left at the discretion of the plaintiff. In addition, the veracity of information submitted to the court by a plaintiff must be tested by the former.

93. Coming back to the facts of the case, the Court observes that there were several indicators that should have alerted the court to the fact that the applicant's place of residence was or could have been known to the plaintiff and could be identified. For instance, the plaintiff's claim contained a reference to a telephone conversation he had recently had with the applicant (see paragraph 9 above). According to the applicant, A.A. further referred to regular telephone conversations between the applicant and A.S. in her witness testimony – a claim the Government have not contested. Furthermore, even though the domestic court was not expressly informed of the fact that the applicant had moved back to the couples' previous place of residence, that the landline there was used for their telephone conversations, and that the plaintiff received correspondence at that address, it cannot be excluded that these circumstances would have transpired had the court made further enquiries and scrutinised the actions A.S. had taken in establishing the applicant's place of residence (compare and contrast with the case of *Avotiņš*, cited above, §§ 120 and 122). Lastly, the materials in the case file indicate that A.S. was aware of property belonging to the applicant and that the couple had children together (see paragraphs 9-10 above). These were additional avenues through which the applicant's place of residence could have been identified. Nevertheless, the domestic court did not attempt to verify the truthfulness of the information provided by the plaintiff.

94. Even though in the present case, unlike in the case of *Miholapa* (cited above), the defendant's address was not at the domestic court's

disposal, the Court is not persuaded that the authorities exercised the requisite diligence before resorting to a notice in the Official Gazette. Serving of summons by means of publication in the Official Gazette is not as such considered as incompatible with the guarantees enshrined under the Convention nevertheless it should be normally used as a measure of last resort.

95. Next, the Government argued that the applicant herself should be blamed for the fact that she was not informed of the proceedings, as she had failed to declare her change of residence on the population register. The Court observes that the Law on Domicile Declaration entered into force on 1 July 2003, that is, when the applicant was no longer living in Latvia and no longer possessed a residence permit there (see paragraph 8 above). In these circumstances, it does not appear that under section 6(1) of the above legal act the applicant fell within the scope of those groups of individual which had the duty to declare the residence (see paragraph 35 above).

Furthermore, the Government invoked the Cabinet of Ministers regulation no. 417 (1997) which they argued required the applicant to inform the Latvian authorities about any changes in the information provided in her residence application, (see paragraph 36 above). The Court notes in this regard that had the applicant complied with the above requirement and informed the authorities that her previous address in Latvia was no longer valid, that would not have affected the means of summoning her to court hearings. As the above regulation did not impose an obligation on the applicant to inform the domestic authorities of her new address outside the territory of Latvia, under the domestic law the applicant would have been considered as a person whose place of residence was unknown. Accordingly, she would have been summoned to the hearing by a notice in the Official Gazette (see paragraphs 21 and 22 above), as was also done in the present case (see paragraph 10 above).

In any event, the Court reiterates that even if the parties demonstrate a certain lack of diligence, the consequences attributed to their behaviour by the domestic courts must be commensurate with the gravity of their failings and take heed of the overarching principle of a fair hearing (see *Aždajić*, § 71, and *Gankin and Others*, §27, both cited above). Given what was at stake for the applicant, that is to say, the determination of her civil status and ensuing implications for her private and family life, as well as any pecuniary implications, particular diligence on the part of domestic authorities was required to ensure that Article 6 guarantees with regard to access to court were fully respected.

96. Finally, the Court cannot conclude that the applicant waived her right to participate in the proceedings and to a fair trial because the main precondition for that would have been that she had been aware of the existence of the right in question and therefore also aware of the related proceedings (see *Gyuleva*, § 42; *Dilipak and Karakaya*; §§ 87 and 106; and

Aždajić, § 58; all cited above). The Government's allegation that the applicant had, in fact, been aware of the divorce proceedings is not supported by the information available in the case file. The documents provided by the Government indicate that the matter of the applicant's and A.S. separation had been discussed (see paragraph 7 above). However, that does not mean that the applicant had been aware of the fact that the divorce proceedings had actually been brought before the Latvian courts, let alone of the time and place of the examination of the case.

97. In view of the above considerations the Court concludes that the applicant's divorce proceedings had been incompatible with the requirements of a fair trial. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 OF PROTOCOL No. 7

98. The applicant further complained that the principle of equality between spouses in the event of dissolution of marriage had been breached, thereby violating Article 5 of Protocol No. 7. This complaint was not communicated to the Government.

99. First, the Court observes that this complaint partly relates to the right of access to a court in the applicant's divorce proceedings. Noting that this complaint falls to be and has been examined under Article 6 § 1 of the Convention above, the Court discerns no issue justifying its examination also under Article 5 of Protocol No. 7 to the Convention.

100. Secondly, to the extent that this complaint concerns issues of matrimonial property arrangements in the event of dissolution of marriage, the Court notes that the applicant has failed to substantiate her complaint (see paragraph 19 above).

101. It follows that this part of the application is inadmissible under Article 35 § 3 (a) and must be rejected pursuant to Article 35 § 4 of the Convention.

III APPLICATION OF ARTICLE 41 OF THE CONVENTION

102. 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

103. The applicant claimed 238,296.17 euros (EUR) in respect of pecuniary damage arguing that due to the divorce proceedings she had lost

part of her inheritance from A.S. and her share in the spouses' common property. She also claimed EUR 71,143.59 in respect of non-pecuniary damage.

104. The Government submitted that the applicant's claim for pecuniary damages concerning her proprietary interests had no causal link to the alleged violation of Article 6 of the Convention. In relation to the claim for non-pecuniary damage, the Government argued that a finding of a violation would in itself constitute sufficient just satisfaction in the instant case. Alternatively, they argued that the compensation for non-pecuniary damage should be determined bearing in mind the awards made in similar cases, such as *Andrejeva v. Latvia* ([GC], no. 55707/00, ECHR 2009), *Užukauskas v. Lithuania* (no. 16965/04, 6 July 2010) and *Pocius v. Lithuania* (no. 35601/04, 6 July 2010).

105. 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, it awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

106. The applicant claimed EUR 2,781.34 for the costs and expenses incurred before the domestic courts and EUR 4,713.26 for those incurred before the Court. She substantiated her claims with receipts that stated they had been paid by Mr. V. Baltais, who represented the applicant on the basis of a power of attorney.

107. The Government argued that, because the costs had been paid by the applicant's representative, the applicant had failed to demonstrate that these costs had been incurred in relation to the present case. Thus, they considered that no award should be made under this head. In case the Court decided otherwise, they pointed out that some of the costs appear to have concerned the proceedings about the applicant's property rights and, hence, did not relate to the present case. With regard to the costs incurred before the Court, the Government maintained that the references made in the vouchers were very general and did not substantiate the specific nature of the legal services rendered. In addition, the costs were excessive and could not be substantiated by the complexity of the case. Thus, the Government submitted that if the Court were to award compensation, it should be limited to 418.90 Latvian lati (LVL – approximately EUR 596) in respect of the domestic proceedings and LVL 2,102.50 (approximately EUR 2,991) in respect of the proceedings before the Court.

108. 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 particular, Rule 60 § 2 of the Rules of Court states that

itemised particulars of any claim made under Article 41 of the Convention must be submitted, together with the relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part. Furthermore, costs and expenses are only recoverable in so far as they relate to the violation found (see, among many other authorities, *Andrejeva*, cited above, § 115).

109. The Court agrees with the Government that the costs the applicant incurred in the civil proceedings concerning the marital property do not relate to the violation found in the present case. Furthermore, even though the Court considers it plausible that the applicant arranged the payment of her legal costs through her representative, the information indicated in the vouchers is highly rudimentary. It does not unequivocally establish that all of these costs necessarily concerned the present proceedings and does not indicate how the specific sums were arrived at. These vouchers are not supported by invoices, time-sheets, hourly rates or any other information that would allow the Court to assess their justification. Nonetheless, the Court accepts that the applicant must have incurred legal costs, which are at least partially supported by the vouchers submitted. Accordingly, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,000 covering costs under all heads.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning violation of Article 6 § 1 admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 27 April 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Angelika Nußberger
President