



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

FIFTH SECTION

CASE OF STEBNITSKIY AND KOMFORT v. UKRAINE

(Application no. 10687/02)

JUDGMENT

STRASBOURG

3 February 2011

FINAL

03/05/2011

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

In the case of Stebnitskiy and Komfort v. Ukraine,

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

Peer Lorenzen, *President*,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva,
Ganna Yudkivska,
Angelika Nußberger,
Julia Laffranque, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 11 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 10687/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Vladimir Gennadiyevich Stebnitskiy (“the first applicant”), the director of Komfort (“the applicant company”), a Ukrainian private enterprise, on 22 February 2002.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev, of the Ministry of Justice of Ukraine.

3. On 29 May 2007 the Court declared the application partly inadmissible. It decided to communicate the complaints concerning the length of the criminal proceedings against the first applicant and the allegedly unfair hearings in the applicant company's compensation and insolvency cases, and the non-enforcement of the judgments of 13 December 1999 and 29 June 2000 in the applicant company's favour, the refusal of the national courts to award compensation for damage allegedly inflicted by the Bailiffs' Service and the insolvency proceedings instituted against it. It also decided to examine the merits of the application at the same time as its admissibility (Article 29).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The first applicant was born in 1960 and lives in Donetsk. The applicant company also has its seat in Donetsk.

A. Enforcement of the judgments in the applicant company's favour

5. On 13 December 1999 and 29 June 2000 the Donetsk Regional Commercial Court awarded the applicant company, 27,159.11¹ and 30,786.83² Ukrainian hryvnas (UAH) respectively against the Y. private open joint-stock company. Between November 2000 and January 2001 the Yenakiyevo Bailiffs' Service instituted enforcement proceedings.

6. In December 2001 the applicant company instituted proceedings in the Donetsk Regional Commercial Court against the Yenakiyevo Bailiffs' Service, challenging its inactivity in the enforcement of the above judgments. On 18 June 2003 the court found for the applicant company and ordered the Bailiffs' Service to enforce the judgments. On 17 September 2003 the Donetsk Commercial Court of Appeal upheld that judgment.

7. The judgments of 13 December 1999 and 29 June 2000 in the applicant company's favour were enforced by November 2003.

B. Compensation proceedings against the Bailiffs' Service

8. On an unspecified date the applicant company instituted proceedings in the Donetsk Regional Commercial Court against the Yenakiyevo Bailiffs' Service, claiming UAH 11,657.42³ in compensation for pecuniary damage (inflation losses) caused by the lengthy delay in enforcing the judgments of 13 December 1999 and 29 June 2000 in its favour.

9. On 3 March 2004 the court found against the applicant company. On 18 May 2004 the Donetsk Commercial Court of Appeal upheld that judgment.

10. On 17 June 2004 the Higher Commercial Court of Ukraine refused to examine an appeal by the applicant company as it had failed to pay a court fee. The applicant company appealed against that decision,

¹ At the material time approximately EUR 4,967.37

² At the material time approximately EUR 5,906.71

³ At the material time approximately EUR 1,837.85

arguing that in accordance with section 86 of the Enforcement Proceedings Act, the creditor was dispensed from paying court fees in cases against a legal person, entrusted with enforcing a judgment, for compensation for damage sustained as a result of the non-enforcement of a judgment.

11. On 3 November 2004 the Supreme Court of Ukraine dismissed a cassation appeal lodged by the applicant company as unsubstantiated.

C. Insolvency proceedings

12. During the period from 2000 to 2002 the applicant company instituted numerous proceedings against the Voroshylovskyy District Tax Administration challenging tax payments, fines etc.

13. In June 2003 the Voroshylovskyy District Tax Administration instituted insolvency proceedings in the Donetsk Regional Commercial Court against the applicant company. The Tax Administration stated that the applicant company had failed to pay UAH 57,840.91⁴ in tax in 2000 and had already had a tax lien imposed on it. Moreover, the last transaction on the applicant company's account had taken place more than a year ago and the applicant company's location was unknown. Apparently, the applicant company was not informed about these proceedings.

14. On 4 September 2003, in the applicant company representative's absence, the court declared the applicant company insolvent for failure to pay UAH 57,840.91 in taxes to the State budget. The Voroshylovskyy District Tax Administration was appointed its liquidator.

15. According to the applicant company, it was informed about this decision only by letter of 10 March 2004. Subsequently, the applicant company requested the court to fix a new time-limit for lodging an appeal against the decision of 4 September 2003. On 22 April 2004 the Donetsk Commercial Court of Appeal refused this request because, in accordance with Article 93 of the Code of Commercial Procedure, the relevant time-limit of three months from the date on which the appealed judgment or decision had been adopted had expired. On 22 June 2004 the High Commercial Court of Ukraine dismissed an appeal by the applicant company against the above decisions for non-compliance with the procedural formalities prescribed by law. On 3 November 2004 the Supreme Court of Ukraine dismissed a cassation appeal lodged by the applicant company.

16. On 19 April 2004 the applicant company requested a review of the decision of 4 September 2003 in the light of newly established evidence.

⁴ At the material time approximately EUR 10,140.40

17. On 27 April 2004 the Donetsk Regional Commercial Court started its consideration of the applicant company's request.

18. On 24 May 2004 the proceedings in the case were stayed pending consideration of the applicant company's complaint lodged in 2004 against the tax administration regarding unlawfulness of the latter's decision of 30 April 2000 by which the applicant company had been ordered to make some tax payments and to pay fines.

19. On 30 June 2004 the applicant company's complaint against the decision of 30 April 2000 was left without consideration as the applicant company had been declared insolvent. The final decision in this case was taken by the Supreme Court of Ukraine on 13 January 2005.

20. On 21 October 2005 the Donetsk Regional Commercial Court resumed the proceedings.

21. On 13 December 2005 the Donetsk Regional Commercial Court quashed the decision of 4 September 2003 because the applicant company had not been properly informed about the insolvency proceedings against it. The court also terminated the insolvency proceedings and obliged the Voroshylovsky District Tax Administration to publish a refutation of the statement that the applicant company had been declared insolvent.

22. In its observations of 25 December 2007 the applicant company submitted that no such refutation had yet been published.

D. Criminal proceedings against the first applicant

23. On 6 April 2000 the tax police instituted criminal proceedings against the first applicant for tax evasion. The case was later transferred to a prosecutor's office for investigation.

24. On 5 July 2000 the Donetsk City Prosecutor's Office instituted new proceedings against the first applicant for forgery in public office and joined them to the initial ones. On the same day the first applicant was charged with those crimes.

25. In September 2000 the case was transferred to the court and on 6 October 2000 the Voroshylovskyy District Court of Donetsk started its consideration. Between October 2000 and May 2003 seven court hearings took place and twenty-seven hearings were postponed for various reasons (on nine occasions the first applicant and/or his lawyer failed to appear and on one occasion the first applicant was ill). Other reasons for postponement of hearings included prosecutor's and witnesses' failure to appear, court's decision that additional evidence should be brought into the court hearing, judge's being busy with another case or judge's vacation etc.

26. On 20 March 2003 the court changed the charge against the first applicant to neglect of official duty.

27. On 7 May 2003 the court remitted the case for additional investigation.

28. On 4 July 2003 the Donetsk Regional Court of Appeal quashed this decision and remitted the case to the District Court for consideration on the merits.

29. Between July 2003 and March 2004 one hearing took place and six hearings were postponed for various reasons (on three occasions the first applicant failed to appear).

30. On 13 January 2004 the Supreme Court of Ukraine dismissed a cassation appeal lodged by the first applicant against the decisions of 7 May and 4 July 2003.

31. On 17 March 2004 the Voroshylovskyy District Court of Donetsk again remitted the case for additional investigation.

32. On 14 May 2004 the Donetsk Regional Court of Appeal upheld that decision.

33. On 9 September 2004 the Kuybyshevskiy District Prosecutor's Office suspended criminal proceedings “[instituted] for neglect of official duty” because “it was impossible to establish who had committed that crime”.

34. On 5 May 2005 the Supreme Court of Ukraine dismissed a cassation appeal lodged by the first applicant against the decision of 17 March 2004 on the ground that such decision could not be appealed in cassation.

II. RELEVANT DOMESTIC LAW

A. The Enforcement Proceedings Act of 21 April 1999

35. In accordance with section 86 (1) of the Enforcement Proceedings Act, the creditor is entitled to institute court proceedings against a legal person, entrusted with collecting payments from the debtor, for inadequate or non-enforcement of a judgment due to the fault of that legal person. In such cases the creditor is dispensed from paying court fees.

36. Section 86 (2) provides that compensation for damage caused by the State Bailiff's Service in enforcement proceedings is to be paid in accordance with the procedure prescribed by law.

B. Information letter of the Higher Commercial Court of Ukraine of 11 April 2005 no. 01-8/344

37. According to paragraph 26 of this letter, a legal person, as referred to in section 86 (1) of the Enforcement Proceedings Act, is a tax authority, a bank, and so forth, but not the Bailiffs' Service.

C. The Restoration of a Debtor's Solvency or the Declaration of Insolvency Act of 14 May 1992

38. In accordance with section 3 of this Act, after the debtor is declared insolvent by the court, its business activity shall be stopped. The court nominates a liquidator, who takes over the management of the debtor's assets. Having taken the necessary steps to identify and recover the debtor's debts and search for the assets, the liquidator shall assess these assets and carry out their sale. Having sold the assets and paid the creditors, the liquidator shall submit a report and the liquidation balance to the court.

THE LAW

I. SCOPE OF THE CASE

39. The Court notes that, after the communication of the case to the respondent Government, the first applicant reiterated some of his initial complaints, in particular, his complaint under Article 6 § 3 (d) of the Convention. In its partial decision on admissibility of 29 May 2007, the Court adjourned its examination of a number of the applicants' complaints (see paragraph 3). The remainder of the complaints were declared inadmissible. To the extent that the first applicant now repeats those complaints, which have already been declared inadmissible, the complaints are “substantially the same” as those already declared inadmissible, and they must now be rejected pursuant to Article 35 §§ 2 (b) and 4 of the Convention.

40. The scope of the case now before the Court is limited to those complaints, the examination of which were adjourned on 29 May 2007.

II. COMPLAINT UNDER ARTICLE 6 § 1 OF THE CONVENTION ABOUT THE LENGTH OF PROCEEDINGS

41. The first applicant complained under Article 6 § 1 of the Convention about the length of criminal proceedings against him. This provision reads, in so far as relevant, as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

A. Admissibility

42. 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.

B. Merits

43. The Government submitted that the first applicant had been accused of committing financial crimes, the investigation of which was quite complicated, given the number of witnesses and experts to be questioned. The Government stated that on some occasions the first applicant had failed to appear before the investigation authorities and the court, had requested to postpone hearings in order to gather additional evidence, had challenged the judge and the prosecutor in his case and thus protracted the consideration of the case. According to the Government, the State authorities had conducted an effective investigation and court examination of the first applicant's criminal case. The Government finally submitted that the criminal proceedings against the first applicant had lasted from 6 April 2000 until 9 September 2004, which it considered to be reasonable.

44. The first applicant contested the Government's statement that his behaviour had protracted the consideration of the criminal case against him. According to the first applicant, he had not received any decisions terminating the criminal proceedings against him and therefore he considered them to be still pending. He submitted that the length of the criminal proceedings had been unreasonable and contrary to Article 6 § 1 of the Convention.

45. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among

many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

46. The Court notes that in the present case the criminal proceedings against the first applicant were instituted on 6 April 2000. Subsequently, the applicant was charged and the case was transferred to the court. On 17 March 2004 the court remitted the case for additional investigation. On 9 September 2004 the prosecutor suspended the investigation since it had been impossible to establish who had committed the crime in question. There is no information that any further steps were taken in the case after September 2004.

47. The Court observes that as there is no decision terminating the criminal proceedings instituted against the first applicant. The applicant has been in a state of uncertainty for more than ten years. In such circumstances the Court considers that the criminal proceedings against the first applicant can still be considered as pending.

48. Therefore, the length of proceedings in the first applicant's criminal case cannot be considered to be reasonable. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. COMPLAINT ABOUT THE INSOLVENCY PROCEEDINGS UNDER ARTICLE 1 OF PROTOCOL NO. 1

49. In March 2004 the applicant company complained about the insolvency proceedings instituted against it by the State Tax Administration. It invoked Article 1 of Protocol No. 1 to the Convention, which provides, in so far as relevant, as follows:

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

50. The Government submitted that the applicant company could no longer be considered a victim because the decision of 4 September 2003, by which it had been declared insolvent, had been quashed.

51. The applicant company disagreed.

52. The Court notes that the applicant company was declared insolvent on 4 September 2003. As it did not know about this decision until 10 March 2004, it is difficult to judge to what extent the applicant company was influenced by the decision before that date.

53. The Court notes, however, that by the time the applicant company learned of the decision of 4 September 2003 the time-limit for appealing against it had expired and it was not even possible to request its renewal (see paragraph 15). Thus the decision became final and the applicant company was affected by it for a considerable period of time, until it was quashed in December 2005 under the extraordinary review procedure.

54. The Court further notes that the decision of 4 September 2003 was quashed on grounds of a breach of procedural rules by the first-instance court as the decision was taken in the absence of the applicant company's representative. The Government did not indicate whether there were any avenues open to the applicant company to claim compensation for damages sustained as a result of being affected by the insolvency decision for nearly two years. In particular, the national law did not provide for the possibility of claiming damages from the court in such circumstances.

55. The Court finally notes that the Government did not comment on the applicant company's statement that the decision of 13 December 2005 had not been enforced.

56. Given that the applicant company was affected by the insolvency decision for a long period of time and that the order quashing it did not rectify the effects of the decision, namely, the inability to carry on business activities for nearly two years, that apparently no possibility of claiming damages exists in such circumstances and that no refutation has been published in enforcement of the decision of 13 December 2005, the Court is of the opinion that the applicant company can still be considered a victim of an alleged violation of Article 1 of Protocol No.1. Therefore, it rejects the Government's objection.

57. 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.

B. Merits

58. The Government reiterated their observations on the admissibility of this complaint.

59. The applicant company submitted that its business activity had been rendered impossible by the decision in question.

60. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public

authority with the peaceful enjoyment of possessions should be lawful (see *Capital Bank AD v. Bulgaria*, no. 49429/99, § 133, ECHR 2005-XII (extracts)).

61. The Court notes that by a decision of 13 December 2005 the national court recognised that the decision on the applicant company's insolvency of 4 September 2003 was unlawful and quashed it.

62. The Court further notes that the applicant company did not specify what particular damage it sustained as a result of the insolvency decision. However, the Court is of the opinion that the question of particular damages is more pertinent for substantiation of the applicant company's claims under Article 41 of the Convention, if any.

63. The Court observes that, according to the national law, in case of insolvency, the business activity of the insolvent company shall be stopped as of date of decision on its insolvency. Moreover, the company cannot manage its assets as it becomes the obligation of a liquidator. The Court further observes that the limitations in question are aimed at the efficient conduct of insolvency proceedings and cannot be considered to be disproportionate. However, the applicant company was declared insolvent following a decision taken in its representative's absence and that decision was later quashed by the national court as unlawful.

64. Therefore, the limitations on the applicant company's business activity between 4 September 2003 and 13 December 2005, which included control of the applicant company's assets by the liquidator (in the present case, the State Tax Administration – the same body which instituted insolvency proceedings against the applicant company), cannot be considered to be lawful.

65. Therefore, there has been a violation of Article 1 of Protocol No. 1.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Complaint under Article 6 § 1 of the Convention about unfairness of the compensation proceedings

66. The applicant company complained under Article 6 § 1 of the Convention about the alleged unfairness of the compensation proceedings.

67. The Government submitted that the applicant company had not complied with the six-month time-limit because its complaints concerning the unfair hearing in the compensation proceedings had been lodged only on 24 July 2005, while the final decision in the compensation proceedings had been adopted by the Supreme Court of Ukraine on 3 November 2004.

68. The applicant company stated in reply that in the compensation proceedings the national courts had misinterpreted the relevant law and that the information letter of the Higher Commercial Court of Ukraine did not have the force of law.

69. The Court notes at the outset that the applicant company raised its complaints in respect of the unfairness of the compensation proceedings in its letters of 17 March and 26 July 2004. Therefore, the applicant company complied with the six-month rule under Article 35 § 1 of the Convention.

70. The Court further notes the applicant company's cassation appeal against the lower courts' refusals to allow its claim remained unexamined because of the applicant company's failure to pay the required court fee. In this respect, the Court reiterates that the domestic courts are best placed to interpret and apply rules of substantive and procedural law (see, amongst many authorities, *Rizhamadze v. Georgia*, no. 2745/03, § 21, 31 July 2007). The applicant company neither complained that the legal provision in question was unclear and lacked foreseeability, nor stated that it had lacked the funds to pay the required court fee and had been thus precluded from lodging a cassation appeal. It simply insisted on its own interpretation of this provision. In so far as the relevant domestic decisions do not disclose any manifestly arbitrary reasoning (see, by contrast, *Donadze v. Georgia*, no. 74644/01, § 32, 7 March 2006), the Court considers that the applicant company's complaint under Article 6 § 1 of the Convention about unfairness of the compensation proceedings is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Complaints under Article 1 of Protocol No. 1 about non-enforcement of the judgments in the applicant company's favour and about failure to award it compensation

71. The applicant company further complained under Article 1 of Protocol No. 1 about the lengthy delay in enforcing the judgments of 13 December 1999 and 29 June 2000 and about the failure of the national courts to award it compensation for damage caused by the Bailiffs' Service.

72. The Government submitted that the applicant company had failed to exhaust effective domestic remedies in respect of its complaint about the failure to award compensation for damage allegedly caused by the Bailiffs' Service because it had failed to lodge a cassation appeal in accordance with the procedural formalities required by law (namely, the applicant company had failed to pay the required court fee). They also reiterated their objections as for the compliance with the six-month rule.

73. The Court notes that the debtor in the present case is a private company. The Court reiterates that the State cannot be considered responsible for the lack of funds of a private company and its responsibility extends no further than the involvement of State bodies in the enforcement proceedings (see *Shestakov v. Russia* (dec.), no. 48757/99, 18 June 2002).

74. The Court observes that the Ukrainian legislation provides for a possibility to challenge before the courts the lawfulness of actions and omissions of the Bailiffs' Service in enforcement proceedings against private debtors and to claim damages from them for the delays in payment of the awarded amount (see, for instance, *Kukta v. Ukraine* (dec.), no. 19443/03, 22 November 2005).

75. Referring to its above findings under Article 6 § 1 of the Convention, the Court finds that the applicant company's complaints under Article 1 of Protocol No. 1, even assuming that the applicant company had a legitimate expectation in respect of its compensation claim, must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention for the failure to exhaust domestic remedies.

C. Complaints under Article 6 § 1 of the Convention related to the insolvency proceedings

76. The Government submitted that the applicant company had lost its victim status in respect to its complaint concerning the insolvency proceedings because the decision of 4 September 2003 had been quashed.

77. In reply, the applicant company stated that it had not received the decision terminating the insolvency proceedings and that such a decision had not been enforced. In particular, the tax authorities had failed to publish the refutation required by the decision of 13 December 2005. Moreover, the applicant company believed that the tax authority could re-institute insolvency proceedings without informing the applicant company.

78. The Court notes that, by the decision of 13 December 2005, the decision of 4 September 2003 complained of was quashed. Accordingly, the applicant company cannot claim to be a victim of a violation under Article 6 § 1 of the Convention. Its complaint under Article 6 § 1 of the Convention related to the insolvency proceedings is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. 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

80. The first applicant claimed UAH 1,036,440.06⁵ and the applicant company claimed UAH 1,851,687.12⁶ in respect of pecuniary and non-pecuniary damage.

81. The Government considered the applicants' claims exorbitant and unsubstantiated.

82. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

83. As for the applicants' claims in respect of non-pecuniary damage, the Court considers that the finding of a violation constitutes in itself sufficient just satisfaction in respect of the applicant company's claim. On the other hand, it awards the first applicant EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

84. The applicants also claimed UAH 806.29⁷ for the costs and expenses incurred before the domestic courts and the Court.

85. The Government submitted that they would like to leave this question at the Court's discretion.

86. 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 were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the first applicant the sum of EUR 33 for the proceedings before the Court.

⁵ Around 92.959,80 euros

⁶ Around 166.080 euros

⁷ Around 72,32 euros

C. Default interest

87. The Court considers it appropriate that the default interest 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 complaints under Article 6 § 1 of the Convention concerning the length of the criminal proceedings against the first applicant and under Article 1 of Protocol No. 1 concerning the insolvency proceedings against the applicant company 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* that there has been a violation of Article 1 of Protocol No. 1;
4. *Holds*
 - (a) that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant company;
 - (b) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) in respect of non-pecuniary damage and EUR 33 (thirty three euros) in costs and expenses, plus any tax that may be chargeable, to be converted into Ukrainian hryvnas at the rate applicable at the date of settlement;
 - (c) 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;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 3 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President