



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

FOURTH SECTION

**CASE OF HEINO v. FINLAND**

*(Application no. 56720/09)*

JUDGMENT

STRASBOURG

15 February 2011

**FINAL**

*15/05/2011*

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



**In the case of Heino v. Finland,**

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić,

Vincent A. de Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 25 January 2011,

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

## PROCEDURE

1. The case originated in an application (no. 56720/09) against the Republic of Finland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Finnish national, Ms Tuija Heino (“the applicant”), on 21 October 2009.

2. The applicant was represented by Mr Markku Fredman, a lawyer practising in Helsinki. The Finnish Government (“the Government”) were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. The applicant alleged, in particular, that her right to respect for home and correspondence under Article 8 of the Convention had been violated and that she had had no access to a court or an effective remedy in this respect under Articles 6 and 13 of the Convention.

4. On 12 January 2010 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1955 and lives in Helsinki.

6. The applicant is an attorney. Some business transactions of her client's spouse were investigated by the police but she herself was not a suspect.

7. On 7 October 2009 police investigators conducted a search at the applicant's office. During the search some e-mail correspondence were copied from her computer and certain documents were seized.

8. By letter dated 12 October 2009 the head of the investigation (*tutkinnanjohtaja, undersökningsledaren*) informed the applicant that the seizure of the data had not been successful due to the fact that the wrong files had been copied, and that the information copied had been destroyed. The applicant allegedly never received a copy of the seized files so it was not possible to verify whether the seizure of the data really had been unsuccessful. The seized documents remained in the police's possession.

9. The pre-trial investigation has been concluded and the case has been submitted to the public prosecutor for consideration of charges. No court proceedings have been initiated yet.

## II. RELEVANT DOMESTIC LAW

### A. Constitution

10. According to Article 10 of the Finnish Constitution (*perustuslaki, grundlagen*, Act no. 731/1999), the sanctity of everyone's home is guaranteed. Measures derogating from this right, and which are necessary for the purpose of guaranteeing basic rights and liberties or for the investigation of crime, must be laid down by an Act.

### B. Coercive Measures Act

11. Chapter 5, section 1, subsection 1, of the Coercive Measures Act (*pakkokeinolaki, tvångsmedelslagen*, Act no. 646/2003) provides that a search may be conducted, *inter alia*, if there is reason to suspect that an offence has been committed and provided the maximum sentence applicable exceeds six months' imprisonment.

12. According to Chapter 5, Section 3, of the Coercive Measures Act, an official with the power of arrest shall decide on a search of premises. However, a police officer may carry out a search of premises without a warrant when the purpose of the search is to locate a person to be apprehended, arrested, detained, brought to court or subjected to a bodily search, or to seize an object, when continuously followed or monitored since the commission of the offence. A police officer may carry out a search of the premises also in other urgent cases.

13. The person whose domicile is being searched, or in his or her absence someone else, must be given the opportunity to be present at the search and to call a witness, unless this causes delay. If none of the above-

mentioned persons was present at the time of the search, the person whose domicile has been searched must be immediately informed (Chapter 5, section 4, subsection 2).

14. Chapter 4, section 2, subsection 2 of the Coercive Measures Act provides that a document shall not be seized for evidential purposes if it may be presumed to contain information in regard to which a person referred to in Chapter 17, section 23, of the Code of Judicial Procedure is not allowed to give evidence at a trial and provided that the document is in the possession of that person or the person for whose benefit the secrecy obligation has been prescribed. A document may nevertheless be seized if, under section 27, subsection 2 of the Pre-Trial Investigation Act, a person referred to in Chapter 17, Article 23, of the Code of Judicial Procedure would have been entitled or obliged to give evidence in the pre-trial investigation about the matter contained in the document.

#### *C. Code of Judicial Procedure*

15. Under Chapter 17, section 23, subsection 1, of the Code of Judicial Procedure (*oikeudenkäymiskaari, rättegångsbalken*; as modified by Acts no. 571/1948 and 622/1974), counsel may not testify in respect of what a client has told him or her for the purpose of pleading a case, unless the client consents to such testimony. Although subsection 3 provides for an exception to this secrecy obligation if the charges concern an offence carrying a minimum sentence of six years' imprisonment (or attempting or aiding and abetting such an offence), this exception does not extend to counsel for an accused.

#### *D. Advocates Act*

16. Under section 5c of the Advocates Act (*laki asianajajista, lagen om advokater*; as modified by Act no. 626/1995) an advocate or his assistant shall not without due permission disclose the secrets of an individual or family or business or professional secrets which have come to his knowledge in the course of his professional activity. Breach of this confidentiality obligation shall be punishable in accordance with Chapter 38, section 1 or 2, of the Penal Code, unless the law provides for a more severe punishment on another count.

#### *E. Remedies*

17. Chapter 4, section 13, of the Coercive Measures Act provides that, at the request of a person whom the case concerns, the court shall decide whether the seizure of any materials shall remain in force. A request which has been submitted to the court before its examination of the charges shall be considered within a week of its reception by the court. The court shall provide those with an interest in the matter an opportunity to be heard, but

the absence of any such persons shall not preclude a decision on the issue. A decision reviewing a seizure is subject to a separate appeal (Chapter 4, section 16, subsection 1).

18. According to section 118, subsection 3, of the Constitution everyone who has suffered a violation of his or her rights or sustained loss through an unlawful act or omission by a civil servant or other person performing a public function shall have the right to request that the civil servant or other person in charge of the public function be sentenced to a punishment and that the public organisation, official or other person in charge of a public function be held liable for damages, as provided in more detail by an Act.

19. Chapter 40, section 9, subsection 1, of the Penal Code (*rikoslaki, strafflagen*, as modified by Act no. 604/2002), provides that if a public official, when acting in office, intentionally in a manner other than that provided above in this Chapter violates or neglects to fulfil his official duty based on the provisions or regulations to be followed in official functions, and the act, when assessed as a whole, taking into consideration its detrimental and harmful effect and the other circumstances connected with the act, is not a petty offence, he shall be sentenced for violation of official duties to a fine or to imprisonment for a maximum of one year.

20. Chapter 40, section 10, of the Penal Code (as modified by Act no. 604/2002) provides that if a public official, when acting in office, through carelessness or lack of caution, in a manner other than that referred to in section 5, subsection 2, violates or neglects to fulfil his or her official duty based on the provisions or regulations to be followed in official functions, and the act, when assessed as a whole, taking into consideration its detrimental and harmful effect and the other circumstances connected with the act, is not a petty offence, he shall be sentenced for negligent violation of official duties to a warning or to a fine.

21. According to Chapter 1, section 14, of the Criminal Procedure Act (*laki oikeudenkäynnistä rikosasioissa, lagen om rättegång i brottmål*, as modified by Act no. 647/2003), an injured party may bring a private prosecution only if the public prosecutor has decided not to press charges.

22. Under Chapters 3 and 4 of the Tort Liability Act (*vahingonkorvauslaki, skadeståndslagen*, Act no. 412/1974) proceedings may be brought against the State in respect of damage resulting from fault or neglect by its employees in the performance of their duties.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

23. The applicant complained that her right to respect for home and correspondence had been violated as provided in Article 8 of the Convention, which reads as follows:

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

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

24. The Government contested that argument.

#### A. Admissibility

25. The Government argued that the applicant had not exhausted domestic remedies as the applicant had not requested a court under Chapter 4, section 13, of the Coercive Measures Act to decide whether the seizure should remain in force. There appeared to be no specific reasons absolving the applicant from exhausting this remedy. As she had not done so, in the Government's view the application should be declared inadmissible under Article 35 §§ 1 and 4 for non-exhaustion of domestic remedies.

26. The applicant disagreed and pointed out that the application did not concern the seizure but the search itself. There existed no legal remedies, either *a priori* or *a posteriori*, under Finnish law against a search. Even though there existed an effective remedy in relation to a seizure, a possible favourable outcome of such proceedings could not have had any effect on the search. The applicant had thus fulfilled the criteria for exhaustion of domestic remedies as no such remedies had been available in respect of the search.

27. The Court considers, in the light of the parties' submissions, that this objection is closely related to the merits of the applicant's complaints. It will therefore examine this preliminary objection together with the merits of the case. The Court concludes therefore that this complaint raises questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits, and that no other grounds for declaring it inadmissible have been established. It must therefore be declared admissible.

## **B. Merits**

### *1. The parties' submissions*

28. The applicant noted that there had clearly been an interference with her right to respect for home and correspondence, and that that interference had had a basis in Finnish law. However, the quality of that law was problematic. There existed no legal safeguards whatsoever in this respect. Since very strict limits were called for as regards the conduct of searches without a warrant, the law in question did not fulfil the “in accordance with the law” requirements, as established by the Court. When searches were conducted in law offices, the safeguards against arbitrariness had to be particularly strong. It did not make any difference whether the applicant herself was suspected of an offence or not. Professional secrecy applied to all material in a lawyer's possession regardless of the capacity in which he or she had obtained it. The fact that the search had been conducted in an attorney's office only made the need for effective legal safeguards against abuse and arbitrariness more apparent.

29. The applicant agreed that the interference had pursued a legitimate aim. She stressed that her application concerned the lack of any safeguards to challenge the search conducted at her office. This issue was closely linked to the “quality of the law” requirement and therefore to the arbitrary nature of the impugned measure.

30. The Government agreed that the search and seizure of the applicant's office constituted an interference within the meaning of Article 8 of the Convention. In the present case the police had been asked in 2008 to investigate an economic crime that had allegedly been committed a few years earlier. The applicant, who represented the suspect's spouse C., had refused to give a witness statement and therefore she had been heard in her office on 7 October 2009. In the course of this hearing it had become apparent that the applicant had in her possession materials relevant to the investigation. She had refused to hand these materials over to the police, invoking the obligation of professional secrecy of lawyers. The police had contacted C. who had given her consent to the delivery of the materials in question to the police.

31. The Government noted that a new search had been conducted at the applicant's law office on 8 October 2009. The applicant had been present during the search and she had been informed about the materials copied from her computer. The hard disk of her computer had not been copied. However, the seizure of the materials from the applicant's computer had not been successful as the materials copied had been illegible. On 9 October 2009 these materials had been ordered to be destroyed and this had been done on 12 October 2009.

32. The Government argued that the present case differed from the cases *Sallinen and Others v. Finland* (no. 50882/99, 27 September 2005) and *Sorvisto v. Finland* (no. 19348/04, 13 January 2009) both as to the facts and the fact that the applicant had not been a suspect but a witness. Also, the extent of the search had been different. Therefore, in the Government's view, the interference had been in accordance with the law, pursued a legitimate aim and had been necessary in a democratic society.

## 2. The Court's assessment

### (a) Whether there was an interference

33. The Court recalls that it has repeatedly held that the notion of “home” in Article 8 § 1 encompasses not only a private individual's home but may also extend, for example, to a person's office used for professional purposes. Consequently, “home” is to be construed as including also the registered office of a company run by a private individual, as well as a legal person's registered office, branches and other business premises (see, *inter alia*, *Buck v. Germany*, no. 41604/98, § 31, 28 April 2005; *Chappell v. the United Kingdom*, 30 March 1989, §§ 26 and 51, Series A no. 152-A2-A; and *Niemietz v. Germany*, 16 December 1992, §§ 29-31, Series A no. 251-B).

34. The parties agree that there was an interference in respect of the applicant's right to respect for her home and correspondence. The Court sees no reason to differ on that point.

35. The Court must therefore examine whether this interference was in conformity with the requirements of the second paragraph of Article 8, in other words whether it was “in accordance with the law”, pursued one or more of the legitimate aims set out in that paragraph and was “necessary in a democratic society” to achieve the aim or aims in question.

### (b) Was the interference justified?

#### (i) Was the interference “in accordance with the law”?

36. The Court notes that the expression “in accordance with the law”, within the meaning of Article 8 § 2 requires firstly that the impugned measure should have some basis in domestic law. Second, the domestic law must be accessible to the person concerned. Third, the person affected must be able, if need be with appropriate legal advice, to foresee the consequences of the domestic law for him, and fourth, the domestic law must be compatible with the rule of law (see, among many other authorities, *Rotaru v. Romania* [GC], no. 28341/95, § 52, ECHR 2000-V; *Liberty and Others v. the United Kingdom*, no. 58243/00, § 59, 1 July 2008; and *Kennedy v. the United Kingdom*, no. 26839/05, § 151., ECHR 2010-).

(α) Was there a legal basis in Finnish law?

37. The Court reiterates that, in accordance with the case-law of the Convention institutions, in relation to Article 8 § 2 of the Convention, the term “law” is to be understood in its substantive sense, not its formal one. In a sphere covered by written law, the “law” is the enactment in force as the competent courts have interpreted it (see, *inter alia*, *Société Colas Est and Others v. France*, no. 37971/97, § 43, ECHR 2002-III). In this respect, the Court notes that its power to review compliance with domestic law is limited, it being in the first place for the national authorities, notably the courts, to interpret and apply that law (see, *inter alia*, *Chappell v. the United Kingdom*, cited above § 54).

38. The Court notes that both parties appear to agree that the search and seizure had a basis in the Coercive Measures Act. The Court is therefore satisfied that the interference complained of had a basis in Finnish law.

(β) “Quality of the law”

39. The second requirement which emerges from the phrase “in accordance with the law” – the accessibility of the law – does not raise any problems in the instant case. The same is true also for the third requirement, the “foreseeability” of the consequences of the domestic law for the applicant, assuming that, in the present case, the obscurity of the notion of “pleading a case” and its link to the issue of confidentiality are left aside (see and compare *Sallinen and Others v. Finland*, cited above, §§ 87 and 91).

40. As to the fourth requirement, the Court reiterates that Article 8 § 2 requires the law in question to be “compatible with the rule of law”. In the context of search and seizure, the domestic law must provide some protection to the individual against arbitrary interference with Article 8 rights. Notwithstanding the margin of appreciation which the Court recognises the Contracting States have in this sphere, it must be particularly vigilant where, as in the present case, the authorities are empowered under national law to order and effect searches without a judicial warrant. If individuals are to be protected from arbitrary interference by the authorities with the rights guaranteed under Article 8, a legal framework and very strict limits on such powers are called for (see *Camenzind v. Switzerland*, 16 December 1997, § 45, *Reports of Judgments and Decisions* 1997-VIII).

41. The Court must therefore examine the “quality” of the legal rules applicable to the applicant in the instant case. It notes in the first place that under Chapter 5 of the Coercive Measures Act, a search may be conducted, *inter alia*, if there is reason to suspect that an offence has been committed and provided the maximum sentence applicable exceeds six months' imprisonment. The search warrant is issued by the investigative organs themselves. A search may be carried out even without a warrant in urgent cases.

42. With regard to the safeguards against abuse existing in the Finnish legislation, the Court observes that, in the absence of a requirement for prior judicial authorisation, the investigation authorities had unfettered discretion to assess the expediency and scope of the search and seizure. Moreover, in cases of urgency, a search could be carried out even without a warrant. The Court notes that in such cases the officer conducting the search was thus competent to assess alone whether or not to conduct the search and to what extent.

43. The Court would emphasise in this connection that search and seizure represent a serious interference with Article 8 rights, in the instant case a lawyer's office and her correspondence, and must accordingly be based on a law that is particularly precise. It is essential to have clear, detailed rules on the subject, setting out safeguards against possible abuse or arbitrariness (see *Sorvisto v. Finland*, cited above, § 118). Moreover, the Court has repeatedly held that since persecution and harassment of members of the legal profession strikes at the very heart of the Convention system, the searching of lawyers' premises should be subject to especially strict scrutiny (see *Elci and Others v. Turkey*, nos. 23145/93 and 25091/94, § 669, 13 November 2003; and *Kolesnichenko v. Russia*, no. 19856/04, § 31, 9 April 2009).

44. Turning to the present case, the Court reiterates that it has already found in the *Sallinen and Others* case (cited above, § 89), that there was no independent or judicial supervision when granting the search warrant as the decision to authorise the order was taken by the police themselves (see also, *mutatis mutandis*, *Kruslin v. France*, 24 April 1990, §§ 34-35, Series A no. 176-A; *Silver and Others v. the United Kingdom*, 25 March 1983, § 90, Series A no. 61; and *Sorvisto v. Finland*, cited above, § 117).

45. The Court notes that the absence of a prior judicial warrant may be counterbalanced by the availability of an *ex post facto* judicial review (see, *mutatis mutandis*, *Smirnov v. Russia*, no. 71362/01, § 45, ECHR 2007-VII). However, in the present case the applicant did not have any effective access, *a posteriori*, to a court to have both the lawfulness of, and justification for, the search warrant reviewed. The applicant's right to respect for her home was thus violated by the fact that there was no prior judicial warrant and no possibility to obtain an effective judicial review *a posteriori* of either the decision to order the search or the manner in which it was conducted (see *Varga v. Romania*, no. 73957/01, § 73, 1 April 2008; and *Işıldak v. Turkey*, no. 12863/02, § 52, 30 September 2008). The situation was aggravated by the fact that the search took place in an attorney's office.

46. The Court therefore concludes that, even if there could be said to be a general legal basis for the impugned measures in Finnish law, that law does not provide sufficient judicial safeguards either before the granting of a search warrant or after the search. The applicant was thus deprived of the

minimum degree of protection to which she was entitled under the rule of law in a democratic society.

47. The Court finds that in these circumstances it cannot be said that the interference in question was “in accordance with the law” as required by Article 8 § 2 of the Convention.

48. There has therefore been a violation of Article 8 of the Convention. For the above reasons, the Court dismisses the Government's preliminary objection based on non-exhaustion of domestic remedies.

*(ii) Legitimate aim and necessity of the interference*

49. Having regard to the above conclusion, the Court does not consider it necessary to review compliance with the other requirements of Article 8 § 2 in this case (see, for example, *Kopp v. Switzerland*, 25 March 1998, *Reports of Judgments and Decisions* 1998-II, § 76).

## II. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION

50. The applicant complained under Articles 6 and 13 of the Convention about the lack of access to a court and lack of an effective remedy in this respect. The Court notes that, although the applicant invoked both Articles 6 and 13 of the Convention, her complaint is more properly examined under the latter Article alone. Article 13 of the Convention reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

51. The Government contested that argument.

### A. Admissibility

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

### B. Merits

#### *1. The parties' submissions*

53. The applicant reiterated that her application only concerned the search of her law office, not seizure of items. There were no explicit or, for that matter, any provisions or case-law even suggesting that a person subject to a search could have access to a court in order to challenge that search. It was true that the civil liability of the officers conducting the search could be invoked but this possibility was neither effective nor capable of providing

redress for the interference with her right to respect for her home as she would have to show that she had actually suffered damage. Nor could a private prosecution be regarded as access to a court. The threshold for “reason to suspect” was very low and none of the private prosecutions initiated against officers having conducted or ordered a search had been successful. This remedy was therefore theoretical as well as illusory. The same was true for lodging a complaint with the Parliamentary Ombudsman (*eduskunnan oikeusasiamies, riksdagens justitieombudsman*) and the Chancellor of Justice (*oikeuskansleri, justitiekanslern*). If the Court were to find no violation of Article 6 of the Convention, there was in any event a violation of Article 13 taken together with Article 8 of the Convention.

54. The Government contended that, according to the Court's case-law, it was not required that there must exist a possibility to challenge the legality of a search before it was conducted but that there should exist a possibility to rely on effective remedies after the search. Under Chapter 4, section 13, of the Coercive Measures Act the legality of a seizure could be examined by a court. An unlawful search could also result in the civil or criminal liability of the State or the officer carrying out the search. Moreover, an injured party could bring a private prosecution if the public prosecutor had decided not to press charges. Also the possibility for the Parliamentary Ombudsman and the Chancellor of Justice to control the legality of measures taken by national authorities should be taken into account. In the Government's view the applicant had thus had access to a court in respect of the search and seizure conducted at her office. In the Government's view, Article 13 was of relevance only in the situations of *ex post facto* judicial review. As no charges had yet been pressed in the present case, there was not yet an arguable claim. In any event, the applicant had had several effective remedies at her disposal but had failed to use any of them.

## 2. The Court's assessment

55. Having regard to the finding relating to Article 8 of the Convention (see paragraph 48 above), the Court considers that it is not necessary to examine separately whether, in this case, there has been an additional violation of Article 13 of the Convention (see *Liberty and Others v. the United Kingdom*, cited above, § 73).

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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**

57. The applicant claimed 4,000 euros (EUR) in respect of non-pecuniary damage.

58. The Government found the applicant's claim excessive as to quantum and considered that the total amount of compensation for non-pecuniary damage should not exceed EUR 1,500.

59. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards the applicant the full sum claimed.

#### **B. Costs and expenses**

60. The applicant also claimed EUR 241.56 for the costs and expenses incurred before the domestic authorities and EUR 2,898.72 for those incurred before the Court.

61. As to the costs and expenses incurred before the domestic authorities, the Government pointed out that the applicant had not been involved in any domestic proceedings and that her claim should therefore be rejected. As to the costs and expenses incurred before the Court, the Government found the applicant's claim excessive as to quantum and considered that the total amount of compensation for costs and expenses should not exceed EUR 2,000 (inclusive of value-added tax).

62. 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, the Court finds that the applicant has incurred some costs and expenses before the domestic authorities. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,500 (inclusive of value-added tax) covering costs under all heads.

### C. Default interest

63. 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. *Decides* to join to the merits of the case the Government's objection based on non-exhaustion of domestic remedies and *declares* the application admissible;
2. *Holds* that there has been a violation of Article 8 of the Convention and *dismisses* in consequence the Government's above-mentioned preliminary objection;
3. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;
4. *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 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to her, 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early  
Registrar

Nicolas Bratza  
President