



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

FIRST SECTION

CASE OF MEIDL v. AUSTRIA

(Application no. 33951/05)

JUDGMENT

STRASBOURG

12 April 2011

FINAL

15/09/2011

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

In the case of Meidl v. Austria,

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

Nina Vajić, *President*,

Anatoly Kovler,

Christos Rozakis,

Peer Lorenzen,

Elisabeth Steiner,

Khanlar Hajiyeu,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 22 March 2011,

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

PROCEDURE

1. The case originated in an application (no. 33951/05) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Austrian national, Mr Walter Meidl (“the applicant”), on 30 August 2005.

2. The applicant, who had been granted legal aid, was represented by Mr H. Sperk, a lawyer practising in Vienna. The Austrian Government (“the Government”) were represented by their Agent, Ambassador H. Tichy, Head of the International Law Department at the Federal Ministry for Foreign Affairs.

3. The applicant alleged, in particular, that the criminal proceedings against him had lasted an unreasonably long time and that the proceedings were unfair.

4. On 2 April 2009 the President of the First 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

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1956 and lives in Salzburg.

6. The case concerns criminal charges against the applicant and other persons for participating in a so-called “carousel fraud” scheme. Such a scheme, in which at least three seemingly unconnected undertakings in different countries cooperate to defraud the exchequer, entails selling cheap products at an artificially high price to a domestic trader. The seller charges turnover tax on the price and would normally have to pay the tax to the exchequer. The trader would then export the goods. Since export sales are exempt from turnover tax, the trader could claim reimbursement of the turnover tax he had paid to the seller. However, the seller had never paid the tax to the exchequer, and – in cases where the scheme is successful – the trader receives reimbursement, and the seller receives turnover tax he has not paid to the exchequer. The foreign buyer often sends the cheap products back to the seller and a new circle begins, hence the name “carousel fraud”.

7. The applicant was exporting goods to countries outside the EU and used a limited liability company (*Mirabell Bequemschuh & Beautytrend Versandgesellschaft m.b.H.*, hereinafter “MV”) for the transactions. Apparently the applicant’s brother was the chief executive of MV and the applicant had authority to act on MV’s behalf. The applicant had started the transactions after being contacted by Mr W.R., an Austrian residing in Brazil, in April 1993. The applicant at first exported royal bee jelly to Brazil; later on he exported computer software parts, filtering devices and electrodes. He quit these transactions in spring 1994 and continued trading in perfume oils. His last transactions were carried out in August 1995.

8. The first tax examination with regard to turnover tax was carried out by the Salzburg City Tax Authority (*Finanzamt Salzburg-Stadt*) in November 1993; according to the applicant, no irregularities were detected by the authority.

9. In February and March 1994, the Salzburg City Tax Authority carried out another examination of the company’s turnover tax conduct and decided to extend its examination to the entire company (MV); the officials told the applicant that some irregularities regarding turnover tax with MV’s suppliers had occurred.

10. On 18 May 1995 and 22 May 1995 the Corporate Tax Authority (*Finanzamt für Körperschaften*) submitted a statement of facts to the Public Prosecutor’s Office in Vienna concerning suspicion of tax fraud committed by eight persons. Apparently the applicant was not among these eight suspects. On 23 May 1995 the Regional Criminal Court authorised the Corporate Tax Authority to investigate.

11. On 16 August 1995 a search warrant for MV was issued – it appears that since the company had moved to another address, on the same day the Tax Authority applied for further search warrants for MV. The searches were carried out on 16 and 17 August 1995.

12. On 23 August 1995 the applicant was questioned as a suspect by the Tax Authority about his business and sales of low-grade products.

13. Apparently, in the meantime the Tax Authority had seized perfume oils at Mr W.R.'s mother's house; an expert was asked to carry out a chemical analysis of samples of the perfume oil and to give an expert opinion on the quality and the value of the oils.

14. The applicant was questioned again on 7 September 1995 and on 13 October 1995. Another search of storage rooms and offices of MV and the applicant took place on 19 September 1995.

15. On 9 February 1996 the expert delivered his opinion about the quality of the perfume oils. He stated that most of the oils were of low quality, while some samples were of slightly higher quality.

16. On 19 November 1996 MV, represented by the applicant, applied for access to the Salzburg Tax Authority file in connection with pending appeal proceedings. On 20 November 1996 the request was rejected, as there were no appeal proceedings pending since the appeal had been submitted out of time. On 18 March 1997 MV, represented by counsel, applied for access to the file of the Salzburg Tax Authority. On 3 April 1997 the file was inspected on behalf of MV and 113 copies of documents were made.

17. On 27 February 1997 the applicant's counsel applied to have the file concerning the criminal proceedings transmitted to the Salzburg District Court (*Bezirksgericht*) to be inspected there. The request was not complied with.

18. By a letter dated 28 May 1997 the Tax Authority sent information on tax evasion (*Abgabenhinterziehung*) and forgery of protected documents (*Fälschung besonders geschützter Urkunden*) concerning several suspects, including the applicant, to the Regional Criminal Court; apparently the charges of forgery did not affect the applicant.

19. On 17 August 1998 the applicant's counsel had applied for access to the criminal court file. By a letter of 19 August 1998 the Vienna Regional Criminal Court informed the applicant's counsel that the file had been with the Vienna Public Prosecutor since 14 July 1997.

20. After the final statements of facts had been supplemented in September 1999 by the Tax Authority, the Public Prosecutor ordered investigations on 15 November 1999. The statement of facts was then supplemented twice, on 24 November and 28 December 1999.

21. On 3 March 2000 the Public Prosecutor issued an indictment against the applicant and eighteen others on suspicion of several counts of tax evasion, fraud, money laundering and of forming a criminal organisation. The indictment was served on the applicant's counsel at some point after 18 April 2000.

22. Four persons accused in the indictment lodged complaints against the indictment in May and early June 2000; their complaints were rejected by the Vienna Regional Criminal Court on 1 December 2000. Two further persons accused in the indictment lodged complaints in April 2001. Their complaints were rejected by the Vienna Regional Criminal Court on 25 June

2001. The indictment, at that point having been served on all accused persons and after all their complaints had been dealt with, became final.

23. On 7 September 2001 the Vienna Regional Criminal Court set the date for the trial for 12 November 2001.

24. On 1 October 2001 the applicant's counsel notified the court of his power of attorney and was given permission to inspect the file. On 2 October 2001 the applicant's counsel inspected the file.

25. On 16 October 2001 applicant's counsel submitted a statement and a request to take evidence and for further witnesses to be heard. Among these witnesses were the lawyer, an accountant and a bank director who had advised the applicant on several aspects of the first transactions.

26. The first hearing was held on 12 November 2001 before the Vienna Regional Criminal Court sitting with two professional and two lay judges; in total the hearings took thirty-five days, spread over almost one year. The court heard several experts and numerous witnesses as well as the investigators from the Tax Authorities as witnesses.

27. The applicant revoked the power of attorney for his defence lawyer on 16 September 2002. The court was notified of this the following day. Subsequently the applicant was granted legal aid and from 18 September 2002 onward the applicant was represented by legal aid counsel.

28. On 20 September 2002 the verdict was pronounced, and the applicant was found guilty of fraud and attempted fraud, evasion of taxes and participation in a criminal organisation. He was sentenced to two years' imprisonment and a fine of 400,000 euros (EUR) with six months' imprisonment in default. The court found as mitigating circumstances that the applicant had no previous criminal record and parts of his acts had been attempts; another mitigating circumstance was the lapse of time since the commission of the offences. The court found as aggravating circumstances that the applicant committed several crimes, was a leading figure in the crimes and had committed a crime causing a high degree of damage (such as aggravated fraud) and on a professional basis.

29. The court held that from May 1993 to August 1995 the applicant had exported various counterfeit products or products of low quality at a high price and knowingly participated in a so-called "carousel fraud", at first as an exporter of the goods, later on as an intermediary trader. The applicant was found guilty of recruiting other unsuspecting companies to export goods and thus to participate in the carousel fraud; when turnover tax was no longer reimbursed, the companies sustained damage amounting to the turnover tax they had paid to the seller of the goods. By integrating these companies into the scheme, the companies were also induced to unknowingly submit false turnover tax reimbursement claims. The applicant was also found guilty of tax evasion, as he had not declared turnover tax for the transactions where he had acted as an intermediary.

30. As regards the application to hear further witnesses, the court held that it was not necessary to hear further witnesses, as the evidence established by documents and the witnesses' and accused persons' statements was sufficient to establish the accused persons' guilt. Hearing W.R., who was fleeing from prosecution and thus could not be heard for practical reasons, could not change the assessment of the evidence the court already had at its disposal.

31. The applicant stated he intended to appeal and lodge a plea of nullity to the Supreme Court. The first-instance judgment, consisting of more than 450 pages, was served on the applicant's counsel on 29 October 2003.

32. The applicant's counsel applied for an extension of the period to lodge the remedies, which was granted. The plea of nullity and the appeal were lodged on 25 January 2004.

33. The Supreme Court issued a first verdict on 3 March 2005, in which it rejected the applicant's plea of nullity. It held that the applicant's complaint that the Regional Criminal Court had refused to take further evidence was ill-founded, since the applications had not been made in accordance with the relevant provisions of the Code of Criminal Procedure.

34. The Supreme Court adjudicated the applicant's and the public prosecutors' appeal, passing judgment on 7 April 2005 after a hearing had been held on 6 April 2005. The Supreme Court increased the prison term to three years and the fine to approximately EUR 2,700,000 with one year's imprisonment in case of default. The decision was served on the applicant's counsel on 25 April 2005.

35. The applicant served his prison sentence from 15 April 2005 to 12 October 2007. The applicant petitioned the President of Austria and was pardoned by a decision of 10 March 2008 and the President released him from paying the fine upon a conditional release and three years' probation.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 §1 OF THE CONVENTION AS REGARDS THE DURATION OF THE PROCEEDINGS

36. The applicant complained of a violation of his right to have the criminal charges against him determined within a reasonable time. He relied on Article 6 of the Convention, which, as far as material for the present application is concerned, reads as follows:

"1. In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;”

37. The Government contested that argument.

A. Admissibility

38. The Government argued that the applicant failed to exhaust domestic remedies as he did not lodge an application under Section 91 of the Court Organisation Act (*Gerichtsorganisationsgesetz*) to set a time-limit, which the Court had held to be an effective remedy against delays in proceedings.

39. The Government pointed out that the applicant specifically complained that the trial had lasted for one year and that it had taken the presiding judge of the Regional Criminal Court another year to prepare the written version of the judgment. The applicant could have lodged applications under Section 91 of the Court Organisation Act to reduce the duration of proceedings.

40. The applicant argued that lodging an application under Section 91 of the Court Organisation Act is not possible against delays caused by the Tax Authorities, the Public Prosecutor and the Supreme Court. Thus, for the first five years, from 1995 to 2000, when the indictment was issued, he did not have a remedy to speed up proceedings. The applicant also contests the effectiveness of the remedy, as there is no sanction provided for a dilatory authority.

41. The Court reiterates that it held in numerous cases that the application under Section 91 of the Court Organisation Act is in principle an effective remedy against court delays, both in the context of civil proceedings (see *Holzinger v. Austria (no. 1)*, no. 23459/94, § 25, ECHR 2001-I) as well as in the context of criminal proceedings (see *Talirz v. Austria* (dec.), no. 37323/97, 11 September 2001). However, the Court also held that the effectiveness of a remedy to accelerate proceedings may depend on whether it has a significant effect on the length of the proceedings as a whole (see *Holzinger*, cited above, § 22). Thus, where proceedings include a substantial period during which there is no remedy to

accelerate proceedings, a request under Section 91 cannot be considered an effective remedy (see *mutatis mutandis*, *Holzinger (no. 2) v. Austria*, no. 28898/95, §§ 21-22).

42. The Court notes that as far as the applicant is concerned the preliminary investigations lasted from 23 August 1995 to the date the indictment was served on him in April 2000. During this time, the Court accepts that the applicant did not have the opportunity to lodge an application under Section 91 of the Court Organisation Act.

43. The Court therefore finds that even if the applicant had lodged the remedy while the proceedings were pending before the courts the effect on its overall length would have been insignificant. It thus rejects the argument that the applicant failed to exhaust domestic remedies.

44. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

45. The applicant complained that the overall duration of proceedings was unreasonably long. He argued that the trial before the first-instance court had lasted for thirty-five days, spread over almost a year, and ended on 20 September 2002, when the judgment was pronounced. The presiding judge needed over a year to finish the written judgment. The proceedings before the Supreme Court took more than another year.

46. In the Government's view, the proceedings did not last an unreasonably long time. The case was characterised by the fact that numerous real companies as well as sham companies were involved. It concerned two phases of transactions in which the export prices amounted to more than EUR 15,000,000 and EUR 27,000,000, and reached dimensions hitherto unknown in Austria. The enormous scope of the case is evidenced by the indictment, comprising 194 pages, and the judgment of the Regional Criminal Court, comprising about 450 pages, and the fact that sixty-three witnesses were heard and the hearings lasted for thirty-five days.

47. The Government argued that the preliminary proceedings had taken up a large part of the time of the proceedings. The reason for this was the considerable number of accused, the suspicions against whom only came to light gradually and in the course of investigation, the complexity of the facts and the need to obtain expert opinions.

48. The Government conceded that the applicant was not required to cooperate in the investigations against him, yet the Government argued that applicant did not help speed up the investigations either.

49. According to the Government, there had never been any significant delays by the authorities, neither had the applicant complained about

periods of inactivity on the part of the authorities. One delay had occurred when the indictment of 3 March 2000 could not immediately be served on all the accused, but it took until April 2001 to serve the indictment on all the accused. Some of the accused also lodged objections to the indictment, which also had to be decided upon. The delay in the drafting of the written judgment was also due to the broad scope of the case and the necessity to set out the facts and the proceedings on the taking of evidence adequately in the judgment. The broad scope of the case is also evidenced by the fact that the period of time to lodge remedies against the judgment was extended.

50. Furthermore, the long duration of investigations was taken into consideration as a mitigating factor when setting the penalties. The applicant was sentenced to two years' imprisonment for aggravated fraud, while the law provides for up to ten years' imprisonment; he was sentenced to one year's imprisonment for tax evasion, whereas the law provides for a prison sentence of up to two years.

51. The applicant stressed that his conduct had never prolonged the proceedings. He argued that he could not be blamed for two of the factors leading to a certain delay, namely the fact that the indictment could not be served on all the accused immediately, and the fact that some of the accused had lodged objections.

52. Also, during the thirty-five days of hearings in the trial, only a fraction of the time concerned the charges against him and the few transactions carried out by him. The applicant also argued that the proceedings against the other eighteen defendants could have been held separately, which would have led to shorter preliminary investigations and a shorter trial against him.

53. Replying to the Government's argument that the lengthy duration of proceedings had been taken into consideration as a mitigating circumstance, the applicant argued that this was not the case, since the Supreme Court had significantly raised the penalty.

54. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities (see *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

55. The proceedings began when the applicant was first questioned as a suspect on 23 August 1995. They ended when the Supreme Court decision was served on the applicant's counsel on 25 April 2005. The proceedings thus lasted for nine years and eight months and the case was heard at two levels of jurisdiction.

56. The Court is aware of the difficulties States encounter in conducting criminal proceedings relating to white-collar crime (see, for instance, *Rösslhuber v. Austria*, no. 32869/96, § 30, 28 November 2000, and *Hoffen*

v. Liechtenstein, no. 5010/04, § 49, 27 July 2006), as such cases often involve very complex matters and a large number of suspects. Whereas it often appears reasonable to group such cases and try all the members of a fraudulent tax scheme in one trial, it might also be considered reasonable to separate the cases to speed up proceedings against the accused (see *Kemmache v. France* (no. 1 and no. 2), 27 November 1991, § 70, Series A no. 218, and, *mutatis mutandis*, *Petrov v. Bulgaria*, no. 15197/02, § 33, 22 May 2008).

57. The Court notes that it took the authorities four years and almost seven months to issue a bill of indictment. It further notes that although final information was sent to the Regional Criminal Court on 28 May 1997, and the file had been with the Public Prosecutor since 14 July 1997, it was only on 3 March 2000, after the final information had been supplemented three times, that the indictment was issued.

58. The hearings before the Regional Criminal Court were held over a period of a little more than ten months, and the written judgment was served on the applicant's counsel more than a year later. The Supreme Court dealt with the remedies lodged against the judgment within one year and three months.

59. The Court finds that the applicant's conduct did not give rise to any delays in the proceedings.

60. While the Court accepts that the case was complex, and considers that the court hearings at the trial and at the appeal stages were held within a reasonable time-limit, the overall duration of proceedings exceeded what is to be considered "reasonable" in the context of Article 6 § 1 of the Convention, particularly due to the duration of the investigation phase. Therefore, there has been a violation of Article 6 § 1 of the Convention as regards the duration of the proceedings.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AS REGARDS LACK OF ACCESS TO THE FILE AND AS REGARDS ADEQUATE TIME AND FACILITIES FOR THE PREPARATION OF THE DEFENCE

61. The applicant complained that his right to access to the file as provided in Article 6 of the Convention had been violated, and that he did not have adequate time for the preparation of his defence, as provided for in Article 6 (3) b of the Convention.

62. The Government contested that argument.

Admissibility

1. Requests for inspection of the file before the Salzburg Tax Authorities

63. The Government argued that the applicant's complaints were unsubstantiated and partly related to the tax proceedings of MV, represented by the applicant, before the Salzburg Tax Authorities. The requests of 19 November 1996 and 18 March 1997 concerned MV and the assessment of taxes. The Government maintained that these requests for access to the file were not connected to the criminal proceedings at issue.

64. The applicant repeated his argument that he did not have full access to the file.

65. The Court notes that the request of 19 November 1996 for access to file related to an appeal which the applicant had lodged in the tax proceedings, to which Article 6 of the Convention does not apply. The request of 18 March 1997 was granted, and there is thus no indication that the applicant's defence rights in respect of the criminal proceedings were curtailed. The Court therefore rejects this part of the complaint as manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

2. Requests for inspection of the file of the Criminal Court

66. The Government stated that the applicant's counsel's first request of 27 February 1997 for transmission of the file to the Salzburg District Court was not complied with. The request of 17 August 1998 was also not complied with, as the file had been with the Public Prosecutor since 14 July 1997.

67. The Government argued that the applicant's counsel neither requested a copy of the file, nor, taking into account the cost of a copy of the file, did he apply for legal aid. The applicant was later represented by another lawyer, and the lawyer applied for inspection of the file on 1 October 2001. The request was granted, and on 2 October 2001 the applicant's counsel inspected the file.

68. As the first hearing in the trial was held on 12 November 2001, about six weeks after the applicant's counsel had inspected the file, the Government maintained that the applicant had sufficient time to prepare his defence.

69. The applicant maintained that he was barred from having access to the file until October 2001, and when his counsel was granted access the file was so voluminous that he did not have enough time to prepare his defence adequately.

70. The Court notes that the applicant had access to the file six weeks before the trial began. Although the case was complex, it cannot be said that this period was too short to allow the applicant to prepare his defence. The

Court thus rejects this part of the complaint as manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

III. FURTHER ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

71. The applicant further complained under Article 6 § 1 of the Convention that the judge presiding over the trial before the Regional Criminal Court was biased, and that the reasons contained in the judgment were not sufficient to convict him and they did not take his arguments into consideration. Relying on Article 6 § 2, he complained that the judge had viewed him as guilty even before his guilt had been established. The applicant further complained that the court had failed to ensure that the applicant's legal-aid counsel's applications of 16 October 2001 to take further evidence, in accordance with domestic procedural requirements, were responded to, alleging a violation of Article 6 § 3 (c). Relying on Article 6 § 3 (d) of the Convention, the applicant complained that the evidence he had asked to be heard on 16 October 2001 would have proved his innocence.

72. The Court finds that in the light of all the material in its possession, to the extent that these complaints are substantiated and fall within its competence, the complaints do not disclose any appearance of a violation of the rights guaranteed under the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. 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

74. The applicant claimed EUR 10,413,393.24 in respect of pecuniary damage and EUR 382,600 for non-pecuniary damage.

75. The Government argued that there was no causal link between the pecuniary damage alleged and any alleged violation of the Convention. Furthermore, some of the items the applicant claimed to be pecuniary damage concerned the applicant's wife's company, as well as his brother, who had guaranteed a loan for him. Also, the Government argued that there

was no causal link between any alleged violation of the Convention and the non-pecuniary damage claimed.

76. 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 8,000 in respect of non-pecuniary damage.

B. Costs and expenses

77. The applicant also claimed EUR 73,127.32 for costs and expenses incurred before the domestic courts and EUR 102,269.50 for those incurred before the Court.

78. The Government argued that the applicant had failed to furnish proof of the costs for domestic proceedings. They also argued that the claim for costs for the proceedings before the Court was excessive.

79. 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. Regard being had to the fact that the applicant had been granted legal aid in the amount of EUR 850 by the Court, the Court awards the applicant EUR 1,150, plus any tax that may be chargeable to the applicant on this amount for the proceedings before the Court.

C. Default interest

80. 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 complaint concerning the length of the criminal proceedings 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, EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage and EUR 1,150 (one thousand one hundred and fifty euros), plus any tax that may be chargeable on 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 12 April 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President