



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

THIRD SECTION

CASE OF VAN DER VELDEN v. THE NETHERLANDS

(Application no. 21203/10)

JUDGMENT

STRASBOURG

31 July 2012

FINAL

31/10/2012

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

In the case of Van der Velden v. the Netherlands,

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

Josep Casadevall, *President*,

Corneliu Bîrsan,

Egbert Myjer,

Ján Šikuta,

Ineta Ziemele,

Nona Tsotsoria,

Kristina Pardalos, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 10 July 2012,

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

PROCEDURE

1. The case originated in an application (no. 21203/10) against the Kingdom of the Netherlands lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Netherlands national, Mr Hendrik Jan van der Velden (“the applicant”), on 6 April 2010.

2. The applicant was represented by Mr G. van Buuren, a lawyer practising in Weert. The Netherlands Government (“the Government”) were represented by their Agent, Agent, Mr R.A.A. Böcker, and Deputy Agent, Ms L. Egmond, both of the Ministry for Foreign Affairs.

3. The applicant alleged, in particular, that he had been a victim of a violation of Article 5 § 1 of the Convention in that his confinement in a custodial clinic was extended contrary to domestic law.

4. On 16 December 2010 the application was communicated 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, Mr Hendrik Jan van der Velden, is a Netherlands national who was born in 1965. As far as the Court is aware, he is currently detained in a custodial clinic in Groningen.

6. On various dates in 2002, the applicant committed five bank robberies and stole four cars.

7. In the course of the criminal investigation, the applicant underwent psychological and psychiatric examinations. The report by the psychologist contains the following:

“At the time of the facts charged, the [applicant] was suffering from inadequate development or pathological disorder. Most likely there is a schizoid personality disorder, but atypical autism cannot be ruled out.

Owing to a lack of social reciprocity the [applicant] cannot adequately adapt his actions to the consequences for the other person. In weighing his motives to act, those consequences remain out of the picture to a large extent. For that reason, the [applicant’s] control of his impulses is impaired.”

The psychiatrist’s report contained the following:

“At the time of the facts charged, the [applicant] was suffering from inadequate development of his mental faculties that can be described as: a personality structure showing signs of serious neurotic distortion. It is then certain that there is no present pathological disorder of the mental faculties. The [applicant’s] various personality characteristics, including in particular his limited frustration tolerance and insufficient impulse control, make him more liable than someone without these personality traits to impulsive behaviour transgressing limits. He gets annoyed and irritated more readily than a person without the personality traits described, has poor ‘stress resistance’, and is relatively easily inclined to ill-considered, reckless and, as it turns out, criminal acts. The [applicant] himself uses the expression ‘short-sightedness’ in this connection.”

Both recommended a finding of diminished criminal responsibility.

8. The applicant was tried by the Roermond Regional Court (*rechtbank*), which on 22 April 2003 convicted him of extortion and theft by means of breaking and entering. It sentenced him to six years’ imprisonment. It ordered him placed at the disposal of the Government (*terbeschikkingstelling*, hereafter “TBS order”) with confinement in a custodial clinic (*bevel tot verpleging van overheidswege*). Its reasoning, as relevant to the case before the Court, included the following:

“The accused, through his actions, has committed a serious interference with the mental integrity (*geestelijke integriteit*) of the staff of the banks he robbed. In so doing, he has caused them personal suffering and psychological harm.

In addition, it is a fact of general knowledge that victims of crimes such as [the bank robberies found proven] may for a long time continue to suffer feelings of fear and insecurity, which can seriously hamper their participation in social life.”

9. The prosecution did not appeal against this judgment. The applicant did, but withdrew his appeal before it was heard.

10. The TBS order started to run on 29 August 2005, the day on which the applicant would otherwise have become eligible for provisional release from his prison sentence. On 12 September 2007, after an initial two-year term, the Roermond Regional Court extended it for a further two years.

11. On 7 July 2009 the public prosecutor applied to the Roermond Regional Court for a further two-year extension of the TBS order. The application stated that the original order had been given in connection with “a crime of violence directed against, or endangering, one or more persons”, and that it was necessary for the safety of others or the general safety of persons for it to be extended.

12. An expert report prepared by the custodial clinic, dated 29 June 2009, noted a certain improvement in the applicant’s state but expressed the view that his return to society should be a gradual and supervised process. It accordingly recommended extending the TBS order.

13. The Regional Court, sitting in a composition other than at the time of the applicant’s trial, gave its decision on 18 August 2009. It declared the public prosecutor’s application inadmissible. Its reason for so doing was that the TBS order could not lawfully be extended beyond four years: the judgment of the trial court did not state that the applicant had been found guilty of an indictable offence (*misdrijf*) directed against, or endangering, the bodily inviolability of one or more persons (Article 38e § 1 of the Criminal Code (*Wetboek van Strafrecht*); see below). Its reasoning included the following:

“The Regional Court considers ... that acts such as those of which [the applicant] has been convicted may raise issues as regards the physical integrity of persons.

It does not appear from the Regional Court’s judgment of 22 April 2003, either explicitly or implicitly, that such an issue arises in the present case, nor whether the TBS order has been given for that reason.

In giving reasons for ordering the measure, the judgment states in so many words that there has been a serious interference with the mental integrity of persons, whereas for the remainder a formulation referring to physical integrity is entirely absent.

Although the duty to give reasons, set out in Article 359 § 7 of the Code of Criminal Procedure (*Wetboek van Strafvordering*), is not subject to stringent requirements, the Regional Court takes the view that the aforementioned line of reasoning, given especially that the acts found proven cannot be considered *per se* as directed against physical integrity, does not justify finding that the Regional Court intended the TBS order to be indefinite.

This means that the TBS order was imposed for a term not exceeding four years.”

14. The public prosecutor appealed, arguing that the danger posed to physical integrity was apparent from the circumstances in which the bank robberies had been committed. These had included the threat of violence using a handgun.

15. The custodial clinic submitted an additional report. It stated that the Regional Court’s decision had raised the applicant’s hopes, but that a process of gradual and supervised resocialisation remained preferable to the complete termination of the TBS order.

16. The appeal was heard by the Arnhem Court of Appeal, which gave a decision on 13 October 2009. Its reasoning included the following:

“It is laid down in Article 359 §§ 7 and 8 of the Code of Criminal Procedure that a judgment imposing a TBS order in connection with an indictable offence that is directed against, or endangers, the bodily inviolability of one or more persons shall so indicate, giving reasons, on pain of nullity. Contrary to what counsel has argued, the Roermond Regional Court, in its judgment of 22 April 2003, has not devoted any explicit consideration to the question whether the TBS order is imposed on the [applicant] in connection with an indictable offence that is directed against, or endangers, the bodily inviolability of one or more persons. In disagreement with counsel, the Court of Appeal takes the view that the use in the judgment of the formulations ‘serious interference with [...] mental integrity’ and ‘personal suffering and psychological harm’ cannot be taken as ‘giving reasons’ within the meaning of Article 359 § 7 of the Code of Criminal Procedure. Said formulations have plainly been included in the judgment within the framework of setting the sentence. In the considered view of the Court of Appeal, as regards what is set out in Article 359 § 7 of the Code of Criminal Procedure, there is an omission (*verzuim*). However, the judgment is final and no legal consequence can any longer be attached to that omission. ...”

It went on to find that the applicant’s use of a gas alarm pistol to threaten bank staff constituted violence directed not only against the mental integrity of persons but also against their bodily inviolability, which meant that the four-year maximum provided in Article 38e § 1 of the Criminal Code did not apply, and to extend the TBS order for one year.

II. RELEVANT DOMESTIC LAW

A. The Criminal Code

17. As relevant to the case, the Criminal Code provides as follows:

Article 37a

“1. The court may impose a TBS order on a suspect whose mental faculties were inadequately developed or pathologically disturbed at the time of the commission of the offence if:

1° the offence he has committed is one which, according to its statutory definition, renders offenders liable to a term of imprisonment of four years or more, ... and

2° the said measure is necessary in the interests of the safety of others or the general safety of persons or goods.

...

4. In giving an order under paragraph 1, the court shall take account of the statements contained in the other opinions and reports made concerning the suspect’s

personality, and shall take account of the seriousness of the offence committed and the number of previous convictions for indictable offences.”

18. The offences of which the applicant was found guilty all carry a maximum sentence of four years or more (Article 317, extortion, nine years; Article 310, theft, four years).

Article 37b

“1. The court may order that a person who is subject to a TBS order shall be confined in a custodial clinic if this is necessary in the interests of the safety of others or the general safety of persons or goods. ...”

Article 38d

“1. A TBS order shall remain in force for a period of two years, counting from the day on which the judgment imposing it has become final.

2. Except as provided in Article 38e ..., the duration of the TBS order can be extended, on the application of the public prosecution service (*openbaar ministerie*), for either one year or two years at a time, if the safety of others or the general safety of persons or goods requires such extension. A second extension is possible only when an order as mentioned in Article 37b ... has been given.”

Article 38e

“1. The total duration of the TBS order shall not exceed a four-year period, unless the TBS order is imposed in connection with an indictable offence that is directed against, or endangers, the bodily inviolability of one or more persons.

2. If the total duration of the TBS order is not limited in time, the duration of the TBS order can be extended periodically, if the safety of others or the general safety of persons requires such extension.”

B. The Code of Criminal Procedure

19. As relevant to the case, the Code of Criminal Procedure provides as follows:

Article 359

“...

7. If a TBS order with an order for confinement in a custodial clinic has been imposed in connection with an indictable offence directed against, or endangering, the bodily inviolability of one or more persons, the judgment shall so indicate, giving reasons.

8. All on pain of nullity.”

C. Drafting history

20. The following passages are excerpted from the drafting history of Article 38e of the Criminal Code and Article 359 of the Code of Criminal Procedure:

1. Parliamentary Documents, Lower House of Parliament (Kamerstukken II) 1992-93, 22909, no. 3 (Explanatory Memorandum (Memorie van Toelichting))

“... I [i.e. the Deputy Minister of Justice (*Staatssecretaris van Justitie*)] propose to let the court which imposes the TBS order with confinement in a custodial clinic decide whether that order is maximised or not. That court knows the case file well and is best placed to get an idea of the interaction between the act and the actor (*daad-dadercomplex*). It will then be determined from the outset whether it is maximised or not. Moreover, it is desirable both from the perspective of treatment and from that of the legal position of the person subject to the order that it be foreseeable at the time when the TBS order is imposed whether TBS order is maximised or not. The treatment plan can be drawn up accordingly. The person subject to the TBS order will then know, if the order is maximised, what its maximum duration will be.” (page 9)

“The proposed amendment of Article 359 [of the Code of Criminal Procedure] can be seen as a logical consequence (*pendant*) of the proposed amendment of Article 38e of the Criminal Code. The court which imposes the TBS order with confinement in a custodial clinic must indicate in its judgment, giving reasons, whether it considers that the crime in issue is one that is directed against, or endangers, the bodily inviolability of one or more persons. It is thus clear from the start whether the TBS order is maximised or not. As a rule, it will be enough for the court to point to the nature of the indictable offence as found proven and qualified. The prescribed reasoning will therefore not normally be subject to such stringent requirements. However, in certain circumstances the court will have to give reasoning setting out the specific facts or circumstances.” (page 13)

2. Parliamentary Documents, Lower House of Parliament (Kamerstukken II) 1992-93, 22909, no. 6 (Memorandum in Reply (Memorie van Antwoord))

“The court which imposes the [TBS order with confinement in a custodial clinic] at the same time decides whether it shall be limited in time or not. The court to which it falls to consider whether the order should be extended or not is dispensed from making that choice.” (pages 1-2)

“The current maximisation arrangement [i.e. the arrangement existing until the entry into force of the legislation here in issue] differs from that proposed as regards the moment at which it is decided whether the duration of the TBS order shall be determined in advance or not. The decision on the question whether the TBS order is maximised will be taken, pursuant to the proposed Article 38e of the Criminal Code, when the order is imposed and is to be based on the trial court’s view of the nature of the crime. In considering the request to extend the TBS order it is no longer an issue whether the crime belongs to the exceptions enumerated in the first paragraph of

Article 38e; the court which imposed the order will already have determined that, giving reasons in accordance with the additional requirements set out in Article 359 [of the Code of Criminal Procedure]. The current arrangement allows the court [which decides on the extension of the TBS order] to express its views on the seriousness of the crime for which the order was imposed in its decision.” (page 5)

THE LAW

I. ADMISSIBILITY

21. The Government submitted that the applicant had not suffered any “significant disadvantage”, within the meaning of Article 35 § 3 (b), as a result of the violation alleged. In particular, a “significant disadvantage” could not result from the mere fact that it was not the Regional Court responsible for originally imposing the TBS order but the Court of Appeal responsible for dealing with the application for the extension of that order which explicitly set out its grounds justifying the view that a “violent crime” was in issue. Indeed, this was purely a question of law which did not require any investigation into the facts and the findings of the Court of Appeal could in principle be the same as those of the Regional Court which had imposed the TBS order in the first place.

22. In the Court’s view the Government’s argument begs the question whether the sentencing judgment delivered by the Roermond Regional Court on 22 April 2003 (see paragraph 8 above) can be construed in the sense suggested by the decision given by the Arnhem Court of Appeal on 13 October 2009 (see paragraph 16 above). This is a question going to the very heart of the case before the Court.

23. The Court of Appeal’s decision, the lawfulness of which the applicant disputes, extended the TBS order by two years beyond the time during which the applicant could lawfully be detained under it if the crime of which the Regional Court convicted him be not a crime of violence. It also made further extensions possible for an indefinite period. It is therefore not possible for the Court to find that the applicant has not suffered any “significant disadvantage” as a result of the alleged violation.

24. The Court notes that the application 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.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

25. The applicant complained that the extension of the TBS order with confinement in a custodial clinic was not “lawful” or in accordance with a “procedure prescribed by law” after the end of the fourth year of its duration. He relies on Article 5 § 1 of the Convention, which, in its relevant part, reads as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

...

(e) the lawful detention ... of persons of unsound mind ...”

26. The Government contested this allegation.

27. The applicant stated that the Regional Court had convicted him of crimes not involving violence. Admittedly he had committed bank robberies displaying a handgun, but there had been no injury caused; the Regional Court’s judgment of 22 April 2003 (paragraph 8 above) had referred only to harm caused to the “mental integrity” of bank staff.

28. In the applicant’s submission, whether the Regional Court had omitted a finding of actual or threatened bodily harm by accident or design, in the absence of any finding that the applicant’s crimes had caused harm or danger to “bodily inviolability” Article 38e § 1 limited the duration of the TBS order to no more than four years. The Court of Appeal had therefore not been entitled to prolong it any further, as it had done by reading things into the Regional Court’s judgment that were not there; consequently, his detention had become unlawful after 29 August 2009.

29. The Government argued that the failure by the Regional Court to mention the fact that the applicant’s crimes had been directed against physical integrity constituted an omission to which no consequences attached in law. However, it was clear from the Regional Court’s judgment and from the case file that such was the nature of the applicant’s acts; the judgment of the Regional Court having become final and unappealable, the Court of Appeal had therefore had the right and the duty to repair this omission.

30. The applicant countered that the Government’s argument failed to take into consideration Article 359 §§ 7 and 8 of the Code of Criminal Procedure. That provision required the sentencing judgment, if it imposed a TBS order with confinement in a custodial clinic for a crime of violence, so to indicate giving reasons and threatened nullity for any failure to do so.

31. The Court has stated the applicable principles as follows (*Medvedyev and Others v. France* [GC], no. 3394/03, §§ 76-80, ECHR 2010):

“76. The Court reiterates that Article 5 of the Convention protects the right to liberty and security. This right is of the highest importance ‘in a democratic society’ within the meaning of the Convention (see, amongst many other authorities, *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 65, Series A no. 12, and *Winterwerp v. the Netherlands*, 24 October 1979, § 37, Series A no. 33).

77. All persons are entitled to the protection of this right, that is to say, not to be deprived, or continue to be deprived, of their liberty (see *Weeks v. the United Kingdom*, judgment of 2 March 1987, Series A no. 114, p. 22, § 40), save in accordance with the conditions specified in paragraph 1 of Article 5.

78. The list of exceptions to the right to liberty secured in Article 5 § 1 is an exhaustive one (see *Quinn v. France*, judgment of 22 March 1995, § 42, Series A no. 311, and *Labita v. Italy* [GC], no. 26772/95, § 170, ECHR 2000-IV), and only a narrow interpretation of those exceptions is consistent with the aim of that provision (see *Engel and Others v. the Netherlands*, 8 June 1976, § 58, Series A no. 22, and *Amuur*, cited above, § 42).

79. The Court further reiterates that where the ‘lawfulness’ of detention is in issue, including the question whether ‘a procedure prescribed by law’ has been followed, the Convention refers essentially to national law but also, where appropriate, to other applicable legal standards, including those which have their source in international law. In all cases it establishes the obligation to conform to the substantive and procedural rules of the laws concerned, but it also requires that any deprivation of liberty be compatible with the purpose of Article 5, namely, to protect the individual from arbitrariness (see, amongst many other authorities, *Bozano v. France*, 18 December 1986, § 54, Series A no. 111; *Amuur*, cited above, § 50; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 8787/99, § 461, ECHR 2004-VII; *Assanidze v. Georgia* [GC], no. 71503/01, § 171, ECHR 2004-II; *McKay v. the United Kingdom* [GC], no. 543/03, § 30, ECHR 2006-X; and *Mooren*, cited above, § 76).

80. The Court stresses that where deprivation of liberty is concerned it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic and/or international law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of ‘lawfulness’ set by the Convention, a standard which requires that all law be sufficiently precise to avoid all risk of arbitrariness and to allow the citizen – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances of the case, the consequences which a given action may entail (see, among other authorities, *Amuur*, cited above; *Steel and Others v. the United Kingdom*, 23 September 1998, § 54, Reports 1998-VII; *Baranowski v. Poland*, no. 28358/95, §§ 50-52, ECHR 2000-III; and *Ječius v. Lithuania*, no. 34578/97, § 56, ECHR 2000-IX).”

32. The Court will first consider the domestic legislation in issue. Article 38e of the Netherlands Criminal Code provides that the total duration of the TBS order shall not exceed a four-year period, unless the TBS order is imposed in connection with an indictable offence that is directed against, or endangers, the bodily inviolability of one or more persons (see paragraph 18 above). Article 359 § 7 of the Netherlands Code of Criminal Procedure provides that if a TBS order with an order for confinement in a custodial clinic has been imposed in connection with an

indictable offence directed against, or endangering, the bodily inviolability of one or more persons, the judgment shall so indicate, giving reasons (see paragraph 19 above).

33. The Court will also have regard to the drafting history of Articles 38e of the Criminal Code and 359 of the Code of Criminal Procedure. The passages excerpted above (see paragraph 20) make it clear that the domestic legislature intends the trial court which first imposes the TBS order with confinement in a custodial clinic to consider whether the indictable offence committed is such as to warrant an order of indeterminate length. If the trial court so finds, it must so state in its judgment, giving reasons therefor; if it does not, then the order cannot be indeterminate. It is not then for the court which decides on the extension of the order to substitute its own view of the matter for that of the trial court.

34. Turning to the facts of the case, the Court observes that the Roermond Regional Court, in the judgment of 22 April 2003 imposing the TBS order with confinement in a custodial clinic, found that the applicant had committed an interference with the mental integrity of the staff of the banks which he had robbed. That same court, in its decision of 18 August 2009 (see paragraph 13 above), held (albeit in a different composition) that the judgment could not be construed as finding the applicant guilty of an offence directed against, or endangering, the bodily inviolability of one or more persons. Such a finding occurs for the first time in the decision of the Arnhem Court of Appeal of 13 October 2009 (see paragraph 16 above).

35. The Court cannot but consider that the decision of the Court of Appeal is incompatible with Articles 38e of the Criminal Code and 359 § 7 of the Code of Criminal Procedure. The drafting history of these provisions moreover removes any lingering doubt.

36. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's continued detention beyond 29 August 2009 was not in accordance with domestic law. There has accordingly been a violation of Article 5 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

37. The applicant also complained that the extension of the TBS order with confinement in a custodial clinic amounted to a retrospective increase of a penalty. He relied on Article 7 of the Convention, which, in its relevant part, provides as follows:

“1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. ...”

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

39. However, having regard to the finding relating to Article 5 § 1 (see paragraph 36 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 7 as well.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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. Pecuniary damage

41. The applicant claimed compensation for pecuniary damage in the form of lost wages. During the first year after the unlawful extension of his TBS order he had been kept confined in a closed institution. After the first year, he was allowed outside the institution to work half-time as a volunteer in a hostel for animals. His employer had offered him a full-time paid job once the TBS order was terminated.

42. The Government submitted that this claim was not supported by any evidence whatsoever.

43. The Court observes that Rule 60 § 2 of the Rules of Court requires applicants itemised particulars of all claims for just satisfaction, together with any relevant supporting documents. The applicant’s claim in respect of pecuniary damage is entirely uncorroborated; the Court therefore rejects it.

B. Non-pecuniary damage

44. The applicant claimed 43,800 euros (EUR) in respect of non-pecuniary damage.

45. In the view of the Government, this claim was not realistic.

46. The Court awards the applicant the sum claimed in full, plus any tax that may be chargeable on that amount.

C. Costs and expenses

47. The applicant also claimed EUR 6,482.70 plus value-added tax for the costs and expenses incurred before the Court. He submitted a detailed fee note for 31 hours and 30 minutes of work at an hourly rate of EUR 196, plus expenses.

48. The Government considered this excessive because the documents submitted by the applicant’s representative to a large extent re-stated

arguments made in the domestic proceedings and his observations largely built on the original application.

49. Since complaints intended to be made before the Court must first have been raised at the domestic level if they are to be declared admissible, it is in the nature of things that the content of documents submitted in the proceedings before the Court will to a greater or lesser extent reflect arguments made in the domestic proceedings. In the instant case the Court is satisfied that the costs and expenses claimed have been actually and necessarily incurred and are reasonable as to quantum. It therefore awards them in full.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
3. *Holds* that there is no need to examine the complaint under Article 7 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 43,800 (forty-three thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 6,482.70 (six thousand four hundred and eighty-two euros and seventy cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

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

Done in English, and notified in writing on 31 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President