



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

FIFTH SECTION

CASE OF ALENKA PEČNIK v. SLOVENIA

(Application no. 44901/05)

JUDGMENT

STRASBOURG

27 September 2012

FINAL

27/12/2012

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

In the case of Alenka Pečnik v. Slovenia,

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

Dean Spielmann, *President*,

Mark Villiger,

Karel Jungwiert,

Boštjan M. Zupančič,

Ann Power-Forde,

Angelika Nußberger,

Julia Laffranque, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 4 September 2012,

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

PROCEDURE

1. The case originated in an application (no. 44901/05) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Slovenian national, Ms Alenka Pečnik (“the applicant”), on 12 December 2005.

2. The applicant was represented by Mr B. Verstovšek, a lawyer practising in Celje. The Slovenian Government (“the Government”) were represented by their Agent, Mrs V. Klemenc, State Attorney.

3. The applicant alleged, in particular, that the contempt of court proceedings were unfair and biased in breach of Article 6 § 1 of the Convention.

4. On 24 March 2011 the application was communicated to the Government.

5. The composition of the Fifth Section sitting on 4 September 2012 was modified in accordance with Rule 25 § 4 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1956 and lives in Celje. She is an advocate practising in Celje.

A. Civil proceedings pursued by M.Š., who was represented by the applicant

7. In 2001, the applicant was representing M.Š. in civil proceedings for compensation for injuries which M.Š. had allegedly sustained in a physical attack by the defendant. The proceedings were conducted before the Domžale Local Court sitting in a formation of a single judge. The judge in the case was Judge M., a Ljubljana Higher Court judge who had been temporarily appointed to the local court.

8. It appears from the transcript of the hearing of 28 November 2001 that the applicant was not permitted to ask the defendant certain questions as they were considered suggestive by Judge M. Her proposal that a witness be heard was also rejected, as this evidence was not considered necessary by the judge.

9. On 28 November 2001 the Domžale Local Court delivered a judgment rejecting M.Š.'s claim for compensation.

10. On 27 December 2001 the applicant's client appealed. In the appeal statement drafted by the applicant, Judge M. was criticised for not putting on record some of his procedural decisions and for not including the applicant's client's statements in full. It stated, *inter alia*:

"It would be reasonable to expect that the judge of a higher court would explain before the trial hearing why it is he who is presiding over this case which ... is being considered at first instance; this is what the judicial code of behaviour would expect him to do. However, the judge was trampling on that code of behaviour by behaving arrogantly and chewing gum during the hearing, and by covering his mouth while talking.

On 28 November 2001 proceedings were held before the Domžale Local Court following the principle of the inquisitorial system. The transcript of the hearing shows that [the proceedings] were not carried out in accordance with the Civil Procedure Act.... The judge, despite requests, did not include in the transcript the statements and messages which were given by the plaintiff or her representative...

The judge asked the plaintiff whether she understood the Slovenian language, and she confirmed that she did. However, he then chewed gum during the interview, so that the plaintiff could not understand him.

Following this superficial evidence-taking, the judge, without deciding on the other requests for evidence, concluded the hearing. For that reason, the facts of the case were wrongly and insufficiently established..."

11. On 26 May 2004 the Ljubljana Higher Court upheld the appeal in the part concerning compensation for bodily injuries. However, it rejected the complaints concerning the alleged procedural defects and inaccuracy of the transcript of the hearing. In particular, the court found that the transcript had been signed by the parties without objection and that none of the parties had challenged the impartiality of the judge by instituting proceedings to that effect.

B. Contempt of court proceedings

12. On 8 January 2002 Judge M., having received the appeal against his judgment of 28 November 2001, issued a decision fining the applicant 150,000 Slovenian tolar (SIT) for contempt of court for her statements in the appeal. It stated that the fine should be paid within fifteen days. The decision reads as follows:

“In the above civil case, the plaintiff’s representative Alenka Pečnik, attorney, lodged an appeal against judgment no. P 107/97 of this court. In the appeal she gravely insults the presiding judge by stating that he was trampling on the judicial code of behaviour by behaving arrogantly, chewing gum and covering his mouth while communicating with those present at the hearing, and that the proceedings were conducted on an inquisitorial basis. These are insulting and invented allegations and for that reason a monetary fine has been imposed on the plaintiff’s representative on the basis of section 109 read together with section 11, paragraphs 3 to 7, of the Civil Procedure Act. The monetary fine for the attorney can be set up to SIT 1,000,000. Since the present case involves a grave insult, the court considers that the appropriate penalty should be SIT 150,000.”

13. On 29 January 2002 the applicant lodged an appeal, alleging an incorrect application of the Code of Civil Procedure (hereinafter referred to as “the CPC”) and an incorrect assessment of the facts. In particular, she stated that her statements were true and were not intended to insult the judge but to describe the atmosphere during the hearing, where the judge had repeatedly raised his voice. She also stated that her client was not a native speaker of Slovenian and had been unable to understand the judge because of his behaviour. She claimed that her remarks had been taken out of context, and submitted statements by her client and a witness in support of her allegations.

14. In her appeal the applicant also requested that the venue of the proceedings be changed, as Judge M. was a judge of the Ljubljana Higher Court, which would normally have had jurisdiction to decide the appeal. Her request was upheld and the case was transferred to the Koper Higher Court.

15. On 8 April 2003 the Koper Higher Court rejected the applicant’s appeal. It found that although the impugned decision relied on statements which had been taken out of context, these statements were indeed insulting and the tone of the appeal in question was in any event inappropriate. The fact that the applicant tried to tone down the impugned allegations in her appeal undermined her credibility and supported the first-instance court’s conclusion that the allegations were invented. Finally, the Koper Higher Court found that the applicant could have defended her client’s interest by using proper language, without insults.

16. On 12 May 2003 the applicant lodged a constitutional appeal. Citing Articles 14, 21, 22 and 23 of the Constitution, the applicant complained that she had been convicted of contempt of court in proceedings which had been

unfair and biased. In her submission, it was unacceptable that a judge who felt personally affected by the impugned statements could convict her and impose a penalty, which could be converted to imprisonment. Furthermore, no evidence apart from that provided by the judge himself was examined in the proceedings, and the Higher Court rejected the appeal by relying merely on the statements of the judge. The applicant alleged that the purpose of the statements she had made in the appeal at issue was to draw attention to the inappropriate behaviour of the presiding judge. These were statements of fact, and were supported by the transcript of the hearing and witness statements. They were not made with the intention of humiliating the presiding judge but in defence of her client's interests.

17. On 27 May 2003 the applicant paid the fine.

18. Declaring the appeal admissible on 26 October 2004, the Constitutional Court delivered its decision on the merits on 27 October 2005. Referring to its conclusion concerning judicial impartiality in the decision of 23 June 2005 (see paragraph 21 below), the Constitutional Court found (by five votes to four) that the applicant's right to an impartial tribunal had not been violated. The Constitutional Court then reviewed the reasons for sentencing the applicant given by the lower courts. It agreed with the lower courts that the applicant's statements did not represent a legitimate exercise of a lawyer's duty to defend her client's interest. It noted that a judicial decision could always be criticised in a way that did not involve an attack on the reputation of the judiciary or a personal attack on a particular judge.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Civil Procedure Code

19. The Civil Procedure Code (*Zakon o pravdnem postopku*, Official Gazette no. 26/1999, "the CPC") provided at the relevant time, in so far as relevant:

Section 11

(3) The court can impose... on an attorney.... a monetary fine for abuse of rights... in a maximum amount of SIT 1,000,000.

(4) The monetary fine should be imposed by a decision. The decision should set a date by which the fine should be paid. The time-limit for the payment of the fine should not be shorter than fifteen days nor longer than three months.

(5) If... the attorney does not pay the fine within the time-limit given by the court, the penalty should be enforced by means of imprisonment of a maximum of one day for each amount of SIT 10,000... the imprisonment of... an attorney.... cannot exceed

100 days. The penalty should be enforced in accordance with the provisions of the law governing execution of the sentence of imprisonment.

(6) The substitution for the fine mentioned in the preceding paragraph should be decided by a special decision.

(7) If a company does not pay the monetary fine within the time-limit set by the court, the court shall enforce this fine, increased by 50%.”

Section 109

“(1) The civil court may sanction anyone who in written submissions insults the court, the party or any other person who is taking part in the proceedings, in accordance with the provisions of paragraphs three to seven of section 11 of this Act.

(2) The penalty imposed in accordance with the first paragraph of this section does not prevent a criminal penalty being imposed for a criminal offence.”

Section 363

“(1) The decision of the first-instance court can be challenged by means of appeal unless it is provided by the present act that no appeal lies [against a certain decision].”

B. Constitutional Court’s jurisprudence

20. On 23 June 2005 the Constitutional Court issued a decision, no. U-I-145/03, concerning the compliance of sections 11 and 109 of the CPC with constitutional rights.

21. The Constitutional Court found that the system whereby the judge who was criticised was also the one who had pronounced the verdict and imposed a sanction was clearly not in breach of the right to impartial tribunal. It emphasised that the interests protected by section 109 were not the reputation and the good name of a particular judge, but the protection of the authority of and the trust in the judiciary. The judge could therefore not be considered a “victim” or an aggrieved party. The Constitutional Court noted that this conclusion was independent of the question whether the sentencing under sections 109 and 11 actually concerned a matter which required the criminal-law guarantees to be respected.

22. As regards the system of sanctions provided in section 11 of the CPC, the Constitutional Court repealed paragraph 3 in so far as it provided a separate penalty of a maximum of SIT 1,000,000 in respect of, *inter alia*, abuse of rights by an advocate. It also repealed paragraphs 5 to 7 of section 11, which allowed a fine to be converted to imprisonment of up to thirty or, as regards, *inter alia*, advocates, 100 days. The Constitutional Court found that section 109 did not *per se* concern an offence which should be determined in proceedings respecting guarantees under the criminal head.

However, it found it arguable that the prohibition of contempt of court and imposition of penalties in this regard was similar to imposing disciplinary sanctions only if the penalties prescribed for these acts were not too severe. In the Constitutional Court's view, the above-mentioned penalties, in particular the term of imprisonment, were serious enough to require all guarantees of criminal proceedings, including all the defence rights, to be provided, which, however, was not the case in the contempt of court proceedings. In view of the quashing of the provisions concerning imprisonment, the Constitutional Court instructed the courts to use the ordinary enforcement proceedings from now on in the event of non-payment of the fine.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE IMPARTIALITY OF THE COURT

23. The applicant complained under Article 6 of the Convention that the right to an impartial tribunal had been violated in contempt of court proceedings.

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

A. Admissibility

1. The parties' submissions

24. The Government objected that Article 6 was not applicable to contempt of court proceedings. They argued that the proceedings in question did not fall under the criminal limb of the aforementioned provision according to the three criteria used by the Court. Firstly, the proceedings were not classified as criminal. The fine was imposed by a civil court, which decided on the matter of its own motion, meaning that there was no prosecutor in the case. The fine was not entered into any criminal record and the personal circumstances of the offender were not taken into account when determining the sentence, as was the case in criminal proceedings. Secondly, the purpose of the proceedings was to ensure order in court, and their nature was similar to disciplinary proceedings.

25. As regards the third criterion, the Government argued that prior to the quashing of the third paragraph of section 11 of the CPC, fines imposed

on attorneys were in practice not higher than SIT 300,000. In support of that argument, they submitted two decisions of the Higher Court (imposing a fine of SIT 100,000 and SIT 300,000 respectively) and one decision of the Supreme Court (imposing a fine of SIT 200,000). As regards the period after the Constitutional Court's quashing of the aforementioned provisions, the courts very rarely imposed the maximum fine. The fine or prison sentence has been since 1 January 2005 entered into records kept by local courts, which included data such as unpaid court fees or expenses.

26. With respect to the conversion of the fine to a prison sentence, the Government explained that this was done if the fine was not paid within the time-limit set by the court. The prison sentence was calculated using the formula provided in section 11 of the CPC. A decision concerning the conversion could be challenged by means of an ordinary appeal. The sentence was executed in accordance with the act concerning execution of penal sentences.

27. As regards the particular circumstance of the present case, the Government pointed out that the fine imposed on the applicant was equivalent to only 626 euros (EUR) and that the situation was therefore comparable to the one in *Putz v. Austria*, 22 February 1996, *Reports of Judgments and Decisions* 1996-I. They maintained that while no oral hearing was provided before the conversion into a prison sentence, such a hearing would in any event be unnecessary, as the matter concerned only a calculation of the number of days of imprisonment and was therefore of a technical nature.

28. Lastly, the Government maintained that the fact that the Constitutional Court considered that the proceedings under some of the paragraphs of section 11 of the CPC fell under the criminal limb should not have a decisive role in determination of the issue in the context of the Convention.

29. The applicant argued that the issue whether the criminal limb of Article 6 applied to the proceedings had already been determined by the Constitutional Court. She maintained that the sentences risked were very severe, in particular because of the risk of automatic conversion into imprisonment for up to 100 days. As regards the latter, the applicant submitted that the only condition for the conversion would have been a finding that the fine had not been paid. Such a decision would have been taken by the same judge who had imposed the fine. The CPC had not envisaged any proceedings to be followed as regards conversion into a prison sentence. The applicant lastly argued that the decisions submitted by the Government which concerned other contempt of court cases were irrelevant to the present case, as they were based on different factual grounds. In any event, the only conclusion which could have been drawn from them was the low tolerance of criticism by the Slovenian courts.

2. *The Court's assessment*

30. The Court reiterates that the question whether the criminal head of Article 6 applies has to be assessed in the light of three alternative criteria laid down in the Court's case-law, namely the classification of the offence in domestic law, the nature of the offence and the nature and severity of the penalty (see, in particular, *Engel and Others v. the Netherlands*, 8 June 1976, § 82, Series A no. 22; *Weber v. Switzerland*, 22 May 1990, §§ 31-34, Series A no. 177; *Ravnsborg v. Sweden*, 23 March 1994, § 30, Series A no. 283-B; and *Putz*, cited above, § 31).

31. The Court finds that the offence laid down in section 109 of the CPC was not classified as criminal under Slovenian law. Its nature, relating to the inherent power of a court to ensure the proper and orderly conduct of its own proceedings, was disciplinary rather than criminal (see *Žugić v. Croatia*, no. 3699/08, §§ 65 and 66, 31 May 2011), albeit resemblance with an insult in criminal law. It remains to be examined whether the nature and severity of the penalty that the applicant risked incurring were such as to bring the matter within the criminal sphere (see *Ravnsborg*, cited above, § 35, and *Putz*, cited above, § 34).

32. The Court first notes that it was not disputed that the fine had not been intended as compensation, but was punitive in character. As to the amount, the Court notes that the applicant was fined SIT 150,000 but risked incurring a penalty of SIT 1,000,000. The Court further observes that at the relevant time in the event of non-payment the fine would be converted into a prison sentence for a term of at most 100 days, whereas one day would be imposed for each SIT 10,000 that remained unpaid. It is apparent from the legislation and the parties' observations that conversion of the fine into a prison sentence would most likely be done by a decision of the judge who imposed the fine. Although an appeal was available against such a decision, the conversion appeared to be a rather automatic measure in the case of non-payment (see paragraphs 19, 26, 27 and 29 above). No procedural safeguards, for instance an oral hearing, were provided in this regard (see *T. v. Austria*, no. 27783/95, § 66, ECHR 2000-XII, and, by contrast, *Ravnsborg*, cited above, § 35; *Kovač v. Croatia* (dec.), no. 49910/06, 23 August 2011; and *Žugić*, cited above, § 68).

33. The Court notes that in 2005 the Constitutional Court repealed paragraphs 3 and 5 to 7 of section 11 of the CPC, which concerned the system of penalties for contempt of court (see paragraphs 20 to 22 above). Although the aforementioned decision had no consequences for the applicant's case, the Court finds it important that the Constitutional Court considered the fines with respect to attorneys and the risk of imprisonment to be of such severity that called for an application of the criminal trial guarantees.

34. While the Court does not find it necessary to decide whether in the present case the amount of the fine imposed and the one risked might have

by themselves attained a level that made the sanction “criminal”, it considers that the risk of conversion into such a substantial prison sentence and the lack of any guarantees attached to the conversion indicated the degree of severity which brought the proceedings in question within the criminal sphere of Article 6.

35. In view of the above, the Court concludes that Article 6 of the Convention is applicable to the present case.

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

B. Merits

1. The parties' submissions

37. The applicant submitted that the judge whose conduct had been the subject of her criticism should not have been allowed to convict her of contempt of court, but should have referred the case to another, impartial, judge. The conduct of the judge in question had lacked impartiality from the objective and subjective angle. In particular, the judge who convicted the applicant felt offended by her statements, which he described as “offensive and invented”. No proceedings had ever been carried out to determine the truthfulness of her allegations. The applicant further argued that the Higher Court and the Constitutional Court had failed to remedy the situation.

38. The Government argued that the subject of the proceedings was the protection of the court's authority and not the reputation of a particular judge. Moreover, the applicant's appeal was determined by a panel of three judges of the Higher Court, which had full jurisdiction to decide on the matter.

2. The Court's assessment

(a) Relevant principles

39. As regards the relevant principles, the Court refers to paragraphs 118 to 121 of its judgment in *Kyprianou v. Cyprus* [GC], no. 73797/01, ECHR 2005-XIII. It reiterates that two approaches are normally used in testing for impartiality, namely a subjective approach, that is endeavouring to ascertain the personal conviction or interest of a given judge in a particular case, and an objective approach, that is determining whether he or she offered sufficient guarantees to exclude any legitimate doubt in this respect (*ibid.*, § 118).

40. As to the objective approach, the Court observes that in the case of *Kyprianu* (cited above) it assessed the requirement of impartiality in the context of contempt directed at the court and aimed at the judges personally. It found that judges who had been the direct object of the applicant's criticisms took the decision to prosecute, tried the issues arising from the applicant's conduct, determined his guilt and imposed the sanction. It concluded that such a confusion of roles between complainant, witness, prosecutor and judge could self-evidently disclose a functional defect and prompt objectively justified fears as to the conformity of the proceedings with the time-honoured principle that no one should be a judge in his or her own cause and, consequently, as to the impartiality of the bench (cited above, §§ 127 and 128). As to the subjective approach, the Court analysed a number of aspects of the judges' conduct and found that the judges had failed to sufficiently detach themselves from the facts of the case as they had been personally insulted by the applicant's comments (*ibid.* §§ 130-31).

(b) Application of the relevant principles to the present case

41. As to the subjective test, the Court notes that while it has no doubt that Judge M. was concerned with the protection of the administration of justice and the integrity of the judiciary, he described himself as having been "gravely insulted" by the applicant's remarks. Having said that, the Court finds that no other elements pointing to personal partiality on the part of Judge M. were brought forward by the applicant, nor can any be ascertained from the case file. In this situation it does not find it necessary to reach a conclusion on the basis of a subjective test, since the requirement of objective impartiality provides a further important guarantee, which must in any event be respected (see *Pullar v. the United Kingdom*, 10 June 1996, §§ 31-33, *Reports of Judgments and Decisions* 1996-III).

42. As to the objective requirement, the Court notes that the contempt was in the present case allegedly committed in the appeal the applicant lodged on behalf of her client. She criticised the manner in which Judge M. conducted the proceedings, as well as his behaviour. There is no doubt that the allegedly offensive remarks were aimed at Judge M. personally. The same judge, after receiving the appeal and before forwarding it to the Higher Court, convicted the applicant under Article 109 of the CPC and imposed the sentence. The Court notes that the confusion of roles between complainant, witness, prosecutor and judge disclosed a functional defect and raised objectively justified fears as to the impartiality of the court (see, *Kyprianou*, cited above, § 127). The proceedings concerning contempt of court therefore failed to meet the required Convention standard under the objective test.

43. Finally, the Court notes that the Higher Court and the Constitutional Court did not remedy the defect in question. The possibility certainly exists that a higher or the highest court might, in some circumstances, make

reparation for defects in the first-instance proceedings (see *De Cubber v. Belgium*, 26 October 1984, § 33, Series A no. 86). In the present case, although the higher courts, in particular the Constitutional Court (see paragraphs 18 and 21), appear to have power to quash the decision on the ground that the first-instance judge had not been impartial, they declined to do so and upheld the conviction and sentence. As a consequence, they did not cure the failing in question (see *Kyprianou*, cited above, § 134, and *De Haan v. the Netherlands*, 26 August 1997, §§ 52-55, *Reports of Judgments and Decisions* 1997-IV).

44. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of the right to an impartial tribunal within the meaning of Article 6 § 1 of the Convention in the present case.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

45. The applicant further complained under Articles 6 § 1 and 13 of the Convention that the decision to convict her of contempt of court contained no reasoning and that it had therefore been impossible to challenge it effectively before the Higher Court.

Article 6 § 1 reads, in so far as relevant, as follows:

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

Article 13 provides:

“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.”

46. In her submissions of 14 November 2011, the applicant complained of a violation of her freedom of expressions guaranteed by Article 10 of the Convention.

Article 10 reads as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

47. As to the complains concerning inadequate reasoning under Articles 6 § 1 and 13 of the Convention, the Court finds that that the applicant's submissions do not disclose any appearance of a violation of the provisions relied on, apart from the aspect that has already been examined above. This part of the application should thus be rejected as manifestly ill-founded under Article 35 §§ 3 (a) and 4 of the Convention.

48. As regards Article 10 of the Convention, the Court notes that the applicant did not raise this complaint, at least in substance, in her initial application, but first submitted it in observations on 14 November 2011. As the last domestic decision in the case had been delivered on 27 October 2005, this complaint was not submitted within the six-month time-limit and must thus be rejected under Article 35 §§ 1 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicant claimed EUR 15,000 in respect of non-pecuniary damage.

51. The Government argued that the finding of a violation should constitute a sufficient just satisfaction.

52. The Court, ruling on the equitable basis, awards the applicant EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

53. The applicant also claimed EUR 2,500 for the costs and expenses incurred before the Court.

54. The Government argued that the claim was not substantiated.

55. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court notes that the applicant explained the claim with reference to statutory lawyer's fees rates and other itemised expenses only in so far as it concerned SIT 134,880 (equivalent to approximately EUR 600) and EUR 380. The remainder of the claim is unexplained. The Court therefore considers it reasonable to award the sum

of EUR 980 for the proceedings before the Court (see *Gaspari v. Slovenia*, no. 21055/03, §§ 81-3, 21 July 2009).

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the right to an impartial tribunal admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the lack of impartiality of judge M.;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of 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 980 (nine hundred and eighty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 September 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President