



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

THIRD SECTION

CASE OF MAJCHRÁK v. SLOVAKIA

(Application no. 21463/08)

JUDGMENT

STRASBOURG

23 October 2012

FINAL

23/01/2013

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

In the case of Majchrák v. Slovakia,

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

Josep Casadevall, *President*,

Egbert Myjer,

Corneliu Bîrsan,

Alvina Gyulumyan,

Ján Šikuta,

Luis López Guerra,

Nona Tsotsoria, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 2 October 2012,

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

PROCEDURE

1. The case originated in an application (no. 21463/08) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Slovak national, Mr Peter Majchrák (“the applicant”), on 14 April 2008.

2. The applicant, who had been granted legal aid, was represented by Mr Ľ. Lipovský, a lawyer practising in Bratislava. The Government of the Slovak Republic (“the Government”) were represented by their Agent, Ms M. Pirošíková.

3. The applicant alleged, in particular, that a decision by the Constitutional Court of 6 December 2007 to declare his constitutional complaint inadmissible on the grounds that it had been lodged belatedly, on the basis of information obtained by the Constitutional Court *proprio motu* and without having given the applicant an opportunity to comment, was contrary to his right of access to court under Article 6 § 1 of the Convention.

4. On 15 April 2011 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 was born in 1958 and lives in Bratislava.

A. Contract and action

6. On 28 January 1996 the applicant, in his capacity as an architect, concluded a contract with the Customs Directorate of the Slovak Republic (*Colné riaditeľstvo Slovenskej republiky*) in which he agreed to produce project documentation for a border crossing between Slovakia and Hungary in return for a fee.

7. On 20 April 2000 the Customs Directorate brought a civil action against the applicant for late completion of the documentation, seeking an order for the payment of a contractual penalty as well as late-payment interest on that penalty.

8. On 24 September 2003 the Bratislava V District Court (*Okresný súd*) dismissed the action, but its judgment was quashed by the Bratislava Regional Court (*Krajský súd*) following an appeal (*odvolanie*) by the applicant. At the same time, the case was remitted to the District Court for re-examination.

9. On 6 June 2005 the District Court allowed the action. It found that the applicant and the defendant had agreed on a contractual penalty amounting to 0.1% of the agreed fee per day of delay on the part of the applicant. It also found that the deadline for the applicant to fulfil his obligations under the contract had been 31 July 1997 and that the applicant had not done so until 8 March 1998. The applicant appealed.

10. On 19 October 2005 the Regional Court declared the appeal inadmissible as having been lodged outside the statutory appeal period. It applied a legal fiction under Article 47 § 2 of the Code of Civil Procedure (Law no. 99/1963 Coll., as applicable at the relevant time), pursuant to which the commencement of the appeal period in the given circumstances is determined with reference to the third day after a written copy of the contested decision has been deposited for the appellant at the local post office, irrespective of when the decision is actually received by the appellant (see paragraph 37 below). The applicant challenged the decision of the Regional Court by way of an appeal on points of law (*dovolanie*) to the Supreme Court (*Najvyšší súd*).

11. The applicant's appeal on points of law *per se* had no suspensive effect and, consequently, the judgment of 6 June 2005 was considered final and binding (see section D on "Enforcement" below).

12. However, on 19 April 2006, the Supreme Court made a separate ruling suspending the effects of the judgment of 6 June 2005 pending the outcome of the appeal on points of law.

13. On 7 December 2006 the Supreme Court, having found that the statutory requirements for applying the above-mentioned legal fiction had not been met, quashed the decision of 19 October 2005 and remitted the applicant's appeal against the District Court's judgment of 6 June 2005 to the Regional Court.

14. It was then incumbent on the Regional Court to re-examine the applicant's appeal against the judgment of the District Court of 6 June 2005.

15. On 20 June 2007 the Regional Court upheld the judgment of 6 June 2005 in so far as the applicant had been ordered to pay the contractual penalty. However, it reversed the ruling that the applicant should pay interest on the contractual fine. It held that a contractual fine and late-payment interest had both the nature of a sanction and that cumulating these two sanction mechanisms was excluded by the nature of things.

B. Service of the judgment and its final and binding effect

16. A written version of the Regional Court's judgment of 20 June 2007 was received by the District Court on 12 July 2007. It was then incumbent on the District Court to ensure that the judgment was served on the parties in person (*do vlastných rúk*).

17. According to the law, once the judgment of 20 June 2007 had been served on both parties, the matter was resolved with final and binding effect (*právoplatnosť*).

18. The actual service of the written version of the judgment of 20 June 2007 was carried out as follows:

On 23 and 24 July 2007 the postal service was unable to reach the applicant's lawyer. Accordingly, on the latter date, a written version of the judgment was deposited at the local post office and a notice to that effect was left in her mailbox.

On 24 July 2007 the judgment was served on the Customs Directorate.

On 7 August 2007 the applicant's lawyer collected the applicant's copy of the judgment from the post office.

19. As to the effective service of the judgment of 20 June 2007 on the applicant, the Government have submitted – and it has not been disputed by the applicant – that it occurred on 27 July 2007, by virtue of the legal fiction (see paragraph 10 above and paragraph 37 below), three days after the deposition of the judgment at the local post office (see the preceding paragraph).

20. The Government have also submitted – this has not been disputed by the applicant either – that the judgment actually became final and binding

on the day of its effective service on the last of the parties, that is to say the applicant, on 27 July 2007.

21. On 7 September 2007, on the applicant's request, the District Court stamped (*doložka právoplatnosti*) his copy of the judgment of 6 June 2005 certifying that, together with the Regional Court's judgment of 20 June 2007, it had become final and binding on "28 July 2005".

22. On 25 September 2007, the District Court provided the Constitutional Court (*Ústavný súd*) on its request (see paragraph 25 below), with a different copy of the judgment of 6 June 2005 with a similar stamp certifying that, together with the judgment of the Regional Court of 20 June 2007, it had become final and binding on 24 July 2007.

C. Constitutional complaint

23. The applicant then lodged a complaint under Article 127 of the Constitution (Constitutional Law no. 460/1992 Coll., as amended) with the Constitutional Court (*Ústavný súd*).

As to the date of commencement of the two-month period for lodging the complaint (see paragraph 34 below), the applicant took as decisive the date stamped on his copy of the judgment of 6 June 2005, that is to say "28 July 2005" (see paragraph 21 above), assuming that the reference to year 2005 was an obvious typographical error actually meaning 2007, and submitted his stamped copy of that judgment to the Constitutional Court.

Accordingly, the applicant dated and mailed his complaint on 24 and 25 September 2007, respectively. The complaint was received at the Constitutional Court on 26 September 2007.

24. The applicant relied on Article 6 § 1 of the Convention and challenged the Regional Court's judgment of 20 June 2007 as being contrary to his right to a fair hearing and the general prohibition of discrimination. In substance, the applicant contested the assessment of the facts and the application of the law by the ordinary courts.

25. On 6 December 2007 the Constitutional Court declared the complaint inadmissible. It noted that it had procured of its own initiative a copy of the contested decisions with a stamp concerning their final and binding effect. This stamp indicated that the matter had been resolved with final and binding effect on 24 July 2007 (see paragraph 22 above).

As the applicant's constitutional complaint had only been mailed on 25 September 2007, it had been lodged outside the two-month time-limit laid down in section 53(3) of the Constitutional Court Act (Law no. 38/1993 Coll., as amended) (see paragraph 34 below).

26. The applicant subsequently complained to the President of the Constitutional Court that, according to his stamped copy, the challenged decisions had become final and binding on 28 July 2007, the mention of the year 2005 (see paragraph 21 above) being an obvious typographical error

actually meaning 2007. He had lodged his constitutional complaint on 25 September 2007 and had therefore met the deadline.

27. In a letter of 25 April 2008 the President of the Constitutional Court notified the applicant that the two-month time-limit for filing his constitutional complaint had commenced on 24 July 2007 when the contested decisions had become final and binding. It had accordingly ended on 24 September 2007. The applicant's complaint had only been mailed on 25 September 2007 and had therefore failed to meet the deadline. Nevertheless, if the applicant had sustained any damage as a result of the incorrect information in the stamped copy he had received, it was open to him to claim compensation under the State Liability Act (Law no. 514/2003 Coll., as amended).

D. Enforcement and related constitutional complaint

28. On 24 January 2006 a lawyer lodged a petition on behalf of the Customs Directorate with a judicial enforcement officer (*súdny exekútor*) for enforcement of the judgment of 6 June 2005 against the applicant.

29. The enforcement proceedings were first authorised, but eventually discontinued in view of the Supreme Court's judgment of 7 December 2006 (see paragraph 13 above).

30. Nevertheless, on 11 May 2005, while the enforcement was still pending, the District Court ordered the applicant to pay the court fees for objections (*námietky*) that he had lodged earlier.

31. On 31 August 2007 the Regional Court upheld the District Court's decision of 11 May 2005 following the applicant's appeal.

32. On 28 February 2008 the Constitutional Court declared inadmissible a complaint under Article 127 of the Constitution, in which the applicant had relied on Articles 6 § 1 and 13 of the Convention and had challenged the decision on fees for his objections as being arbitrary and contrary to his rights to a fair hearing and an effective remedy.

The Constitutional Court found that the applicant's duty to pay the court fees had its legal basis in section 5(1) of the Court Fees Act and that the contested decision had been legally and factually correct.

II. RELEVANT DOMESTIC LAW

A. Constitution

33. Article 127 of the Constitution, subsumed under Section (*Oddiel*) One (dealing with Judicial Power) of Part (*Hlava*) Seven (dealing with the Constitutional Court), provides:

“1. The Constitutional Court shall decide on complaints by natural or legal persons alleging a violation of their fundamental rights or freedoms ... unless the protection of such rights and freedoms falls within the jurisdiction of a different court.

2. If the Constitutional Court finds a complaint justified, it shall deliver a decision stating that a person’s rights or freedoms as set out in paragraph 1 have been violated by a final decision, specific measure or other act and shall quash such decision, measure or act. If the violation that has been found is the result of a failure to act, the Constitutional Court may order [the authority] which has violated the rights or freedoms to take the necessary action. At the same time it may remit the case to the authority concerned for further proceedings, order such authority to refrain from violating the fundamental rights and freedoms ... or, where appropriate, order those who have violated the rights or freedoms set out in paragraph 1 to restore the situation to that existing prior to the violation.

3. In its decision on a complaint the Constitutional Court may grant appropriate financial compensation to the person whose rights under paragraph 1 have been violated.”

B. Constitutional Court Act

34. Section 53(3) of the Constitutional Court Act provides that a complaint to the Constitutional Court must be lodged within two months of the date on which the decision in question has become final and binding or on which a measure has been notified or notice of other interference with the complainant’s interests has been given. As regards measures and other types of interference, this period commences when the complainant has a reasonable opportunity to become aware of them.

35. Under section 31a, the provisions of the Code of Civil Procedure and the Code of Criminal Procedure are to be applied accordingly in proceedings before the Constitutional Court, except where otherwise provided or where the nature of the matter at hand precludes their application.

C. Code of Civil Procedure

36. The service of summonses and other documents is regulated by Articles 45 et seq. of the Code of Civil Procedure. Documents are to be served in person if so provided by statute or so ordered by a court (Article 47 § 1).

37. If the addressee of a document to be served in person cannot be reached, even though he or she stays at the address provided, the deliverer must notify the addressee in an appropriate manner when a new attempt at service takes place. If the new attempt at service fails, the deliverer must deposit the document at a post office or municipal office and advise the addressee accordingly in an appropriate manner. If the addressee does not

collect the document within three days of its deposition, the last day of that period is deemed to be the date of effective service, irrespective of whether the addressee has actually learned of the deposition (Article 47 § 2, as applicable at the relevant time).

D. State Liability Act

38. The relevant provisions of the State Liability Act are summarised, for example, in the Court's judgment in the case of *Ištván and Ištvánová v. Slovakia* (no. 30189/07, §§ 30-35, 12 June 2012).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

39. The applicant complained: (i) that the action against him had been allowed arbitrarily; (ii) that the decision of 6 December 2007 declaring his constitutional complaint inadmissible had been arbitrary; (iii) that his constitutional complaint and other remedies in respect of the enforcement proceedings against him had been rejected or dismissed arbitrarily; and (iv) that the length of the civil proceedings and the enforcement proceedings against him had been excessive.

The applicant relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time by ... [a] tribunal ...”

A. Admissibility

1. Outcome of the action and the ruling of 11 May 2005 on the court fees for the applicant's objections

40. The Court reiterates that, in accordance with Article 19 of the Convention, its duty is to ensure that the obligations undertaken by the Contracting Parties to the Convention are observed. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court, unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are

therefore primarily matters for regulation by national law and the national courts (see *Garćia Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, with further references).

41. In so far as the relevant part of the application has been substantiated, the Court has not found any appearance of a violation of the applicant's right to a fair hearing within the meaning of Article 6 § 1 of the Convention. 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.

2. Other rulings in the enforcement proceedings and the length of the civil proceedings and the enforcement proceedings

42. The Court observes that, in so far as its scope was as formulated in a standardised and prescribed form (*petit*) by the applicant (see, for example, *Obluk v. Slovakia*, no. 69484/01, §§ 48 and 61, 20 June 2006; *Šidlová v. Slovakia*, no. 50224/99, § 53, 26 September 2006; and *Mazurek v. Slovakia* (dec.), no. 16970/05, 3 March 2009), the applicant's constitutional complaint in the enforcement proceedings was aimed exclusively at the decisions of 11 May 2005 and 31 August 2007 (see paragraphs 30 and 31 above) on the court fees for the applicant's objections. In other words, the applicant has not shown that other rulings in the enforcement proceedings were challenged before the Constitutional Court.

43. The Court also observes that the length of the proceedings in the action against the applicant and of the enforcement proceedings was not contested in either of his constitutional complaints.

44. It follows that the relevant part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

3. Decision of 6 December 2007 to declare the applicant's constitutional complaint inadmissible

45. The Government admitted that the Constitutional Court's decision of 6 December 2007 (see paragraph 25 above) had been based on incorrect information, obtained by the Constitutional Court from the District Court, as to the date on which the judgment had become final.

In particular, the Government submitted that the final judgment had been served on the applicant and had thereby become final on 27 July 2007 and that, accordingly, his constitutional complaint of 24 September 2007 had been introduced within the applicable two-month time-limit (see paragraphs 18-20 and 34 above).

46. Nevertheless, relying on the letter of the President of the Constitutional Court of 25 April 2008 (see paragraph 27 above), the Government objected that, concerning this part of the application, the

applicant had failed to respect the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention, as he had failed to pursue any compensation claims he might have under the State Liability Act.

47. The applicant disagreed, and argued that the Government had failed to show that the State Liability Act was an appropriate means, either in theory or in practice, of obtaining redress in respect of the object of the application, or that any claim made under that Act would have had reasonable prospects of success.

48. The Court reiterates the following general principles, which are of relevance in this case, as formulated and summarised, for example, in its judgment in the case of *Akdivar and Others v. Turkey* (16 September 1996, §§ 65 - 69, *Reports of Judgments and Decisions* 1996-IV):

- The rule of exhaustion of domestic remedies obliges those seeking to bring their case against the State before an international judicial or arbitral organ to first use the remedies provided by the national legal system. Consequently, States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption, reflected in Article 13 of the Convention, with which it has close affinity, that there is an effective remedy available in respect of the alleged breach in the domestic system, whether or not the provisions of the Convention are incorporated in national law. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights.

- Under this rule, an applicant should have normal recourse to remedies that are available and sufficient to afford redress in respect of the alleged breaches. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness.

- The rule also requires that the complaints intended to be made subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used.

49. As to the Government's non-exhaustion argument, which concerns a claim for compensation under the State Liability Act, the Court observes that such a claim could in no way lead to rectification of the Constitutional Court's decision. Furthermore, the Court observes that for any such compensation claim to be successful, the elements of damage and causal link would have to be established, which in turn presupposes that a hypothetical outcome of the proceedings, had the applicant's constitutional complaint not been rejected as belated, would have to be established.

However, there is no indication in law and practice that an ordinary court in Slovakia has jurisdiction to examine those elements (see, *mutatis mutandis*, *Popivčák v. Slovakia*, no. 13665/07, §§ 28-9, 33 and 58-60, 6 December 2011).

50. In conclusion, the Court finds that the Government failed to show that the remedy advanced by them was available to the applicant and sufficient to afford him redress in respect of the breaches he alleges, and that its existence was sufficiently certain, not only in theory but in practice. Their objection must accordingly be dismissed.

51. The Court notes that the relevant part of 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.

B. Merits

52. The applicant complained that the Constitutional Court's decision of 6 December 2007 declaring his constitutional complaint inadmissible was contrary to his right of access to court.

53. For the reasons summarised above, the Government admitted that the erroneous information as to the date when the judgment on the action against the applicant had become final and binding had resulted in the applicant being deprived of his right to complain under Article 127 of the Constitution.

54. The Court reiterates that the right to a fair hearing, guaranteed by Article 6 § 1 of the Convention, must be construed in the light of the principle of the rule of law, which requires that all litigants should have an effective judicial remedy enabling them to assert their civil rights (see *Běleš and Others v. the Czech Republic*, no. 47273/99, § 49, ECHR 2002-IX). In this way, the right to a fair hearing embodies the "right to a court", one aspect of which is the right of access, that is the right to institute proceedings before courts in civil matters (see *Golder v. the United Kingdom*, 21 February 1975, § 36, Series A no. 18; *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 43, ECHR 2001-VIII; and *Roche v. the United Kingdom* [GC], no. 32555/96, § 116, ECHR 2005-X). In other words, everyone has the right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal (see, among many other authorities, *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 50, ECHR 1999-I).

55. The Court also reiterates that a restrictive interpretation of the right of access to court guaranteed by Article 6 § 1 would not be consonant with the object and purpose of the provision (see *De Cubber v. Belgium*, 26 October 1984, § 30, Series A no. 86).

56. The Court further reiterates that Article 6 § 1 does not guarantee a right of appeal as such. However, where several levels of jurisdiction exist, each instance must comply with the guarantees of Article 6, including the right of effective access to court (see, *mutatis mutandis*, *Brualla Gómez de la Torre v. Spain*, 19 December 1997, § 37, *Reports* 1997-VIII). Moreover, parties to proceedings must be able to exercise usefully the rights of appeal or other remedies available to them (see *Hadjianastassiou v. Greece*, 16 December 1992, § 33, Series A no. 252, and *Marpa Zeeland B.V. and Metal Welding B.V. v. the Netherlands*, no. 46300/99, § 48, ECHR 2004-X).

57. The Court furthermore reiterates that the concept of a fair hearing also implies the right to adversarial proceedings, according to which the parties must have the opportunity not only to make known any evidence necessary for their claims to succeed, but also to have knowledge of, and to comment on, all evidence adduced or observations made, with a view to influencing the court's decision (see, for example, *Krčmář and Others v. the Czech Republic*, no. 35376/97, § 40, 3 March 2000).

58. As has already been noted above, the applicant's constitutional complaint of 24 September 2007 was declared inadmissible on 6 December 2007 on the grounds that it had been made belatedly.

59. As to the timeliness of the applicant's constitutional complaint, the Court observes that the crucial criterion for its assessment was the date on which the contested decision became final and binding.

For that matter, the applicant based his calculation of the time-limit on the start date of 28 July 2007, and provided the Constitutional Court with *prima facie* evidence in that respect (see paragraph 21 and 23 above). As has been admitted by the Government (see paragraph 45 above), the applicant's constitutional complaint was actually lodged in time.

60. However, of its own initiative, the Constitutional Court obtained information as to when the judgment had become final, which was different from the information submitted by the applicant (see paragraphs 22 and 25 above).

61. The Court also notes that the Constitutional Court based its inadmissibility decision exclusively on the latter information, without advising the applicant of the discrepancy in the dates or affording him an opportunity to comment.

62. Finally, the Court observes that, as has been admitted by the Government, it was an error in the information as to the start date of the applicable time-limit which led the Constitutional Court to reject the applicant's constitutional complaint.

63. In view of the above considerations, the Court concludes that by depriving the applicant of the opportunity to comment on information procured by the Constitutional Court of its own initiative which was crucial

for its decision, coupled with the fact that the information was incorrect, the applicant's right of access to court has been violated.

There has accordingly been a breach of Article 6 § 1 of the Convention.

II. REMAINING ALLEGED VIOLATIONS

64. In connection with the complaints mentioned above, the applicant also relied on Article 13 of the Convention. Citing Article 14 of the Convention, as well as Article 1 of Protocol No. 12, the applicant also complained that he had been treated discriminatorily when compared with the Customs Directorate on account of the latter's being a public authority.

65. The Court observes, that, to a significant extent, the substance of these complaints overlaps with that of the complaints already examined under Article 6 § 1 of the Convention. The Court finds that a separate examination of the same matters under any of the other Convention provisions is not justified.

66. As to the remainder of the complaints, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the provisions relied upon.

It follows that the remainder of the application is in any event manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. 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

68. The applicant claimed 18,331.41 euros (EUR) in respect of pecuniary damage, which consisted of the amount he had had to pay the claimant under the contested judgments. He also claimed EUR 33,193.92 in respect of non-pecuniary damage.

69. The Government contested both claims, the former in principle, the latter as to its amount, which they considered overstated.

70. The Court does not discern any causal link between the violation found (see paragraph 63 above) and the pecuniary damage alleged; it

therefore rejects this claim. On the other hand, it awards the applicant EUR 7,800 in respect of non-pecuniary damage.

B. Costs and expenses

71. The applicant also claimed EUR 11,201.79, consisting of the court fees paid in the civil proceedings (EUR 2,245.73), the court fees paid in the enforcement proceedings (EUR 400.32), legal fees (EUR 2,846.38), administrative and other expenses (EUR 398.33), and compensation for time lost due to the litigation (EUR 5,311.03).

72. Of the amount claimed in respect of legal fees, as supported by documents, the equivalent of some EUR 500 concerned the proceedings before the Constitutional Court and the Court; the remainder concerned proceedings before the ordinary courts.

73. As to the claim in respect of the legal fees, the Government asked the Court to grant the applicant compensation only for reasonably incurred costs and expenses before the Constitutional Court and the Court. As for the remaining claims, the Government objected that they were not supported by any documents.

74. In the present case, the Court observes that, as regards the administrative and other expenses, and the compensation for lost time, the claim has been wholly unsubstantiated. It accordingly has to be dismissed.

75. As to the remaining claims, bearing in mind the information in its possession and the above-mentioned criteria, in particular the violation found (see paragraph 63 above), and noting that the applicant was granted legal aid under the Council of Europe legal-aid scheme (see paragraph 2 above), the Court cannot justify making any further award.

C. Default interest

76. 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

1. *Declares* unanimously the complaint under Article 6 § 1 of the Convention concerning the alleged lack of access to court admissible and the remainder of the application inadmissible;
2. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* by six votes to one

(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 7,800 (seven thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

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

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

Done in English, and notified in writing on 23 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Gyulumyan is annexed to this judgment.

J.C.M.
S.Q.

PARTLY DISSENTING OPINION OF JUDGE GYULUMYAN

In the present case I voted with the majority in finding a violation of Article 6 § 1 of the Convention. However, I beg to differ from the Court's conclusions on just satisfaction under Article 41 of the Convention.

In my opinion the assessment of non-pecuniary damage in this case should have taken account of the fact that the applicant himself contributed to the rejection of his constitutional complaint as being made belatedly, by waiting until the very end of the two-month period allowed before lodging his complaint with the Constitutional Court.

In so far as this fact was not taken into consideration by the majority, I consider the amount awarded in respect of non-pecuniary damage to be excessive.

Even leaving this point aside, I am of the view that the sum in respect of non-pecuniary damage in this case was not determined on an equitable basis.