



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

FIRST SECTION

CASE OF TOPIĆ v. CROATIA

(Application no. 51355/10)

JUDGMENT

STRASBOURG

10 October 2013

FINAL

10/01/2014

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

In the case of Topić v. Croatia,

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

Isabelle Berro-Lefèvre, *President*,
Elisabeth Steiner,
Khanlar Hajiyeu,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Ksenija Turković,
Dmitry Dedov, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 17 September 2013,

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

PROCEDURE

1. The case originated in an application (no. 51355/10) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Croatian national, Mr Zlatko Topić (“the applicant”), on 3 August 2010.

2. The applicant was represented by Mr S. Poldan, a lawyer practising in Rijeka. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

3. The applicant alleged, in particular, that he had not had a fair trial, as required by Article 6 §§ 1 and 3 (d) of the Convention, because he had not been able to obtain the attendance and questioning of witnesses on his behalf.

4. On 5 September 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 1984 and lives in Rijeka.

6. On 29 December 2005 the Rijeka Municipal State Attorney’s Office (*Općinsko državno odvjetništvo u Rijeci*, hereinafter “the State Attorney’s

Office”) indicted the applicant and one other person, F.M., in the Rijeka Municipal Court (*Općinski sud u Rijeci*) on charges of drug possession.

7. The charges were based on a police report alleging that on 1 November 2005 at about 11.30 p.m. the applicant had been in possession of 1.2 grams of marijuana wrapped in a sheet of newspaper, which he had thrown into a rubbish bin when he saw three policemen approaching him.

8. On 23 February 2006 the Rijeka Municipal Court issued a penal order (*kazneni nalog*) finding the applicant guilty of the offence of drug possession and ordering him to pay a fine of 1,458 Croatian kunas (HRK).

9. The applicant objected to the penal order on 13 March 2006, asking the Rijeka Municipal Court to hold a hearing. He also requested the court to commission a DNA or fingerprint forensic analysis of the newspaper sheet in order to obtain evidence as to whether he had been in contact with that object.

10. The Rijeka Municipal Court held a hearing on 29 May 2006. At the hearing the applicant denied the charges and argued that what he had thrown into the rubbish bin was a beer can and not the package of marijuana which was later found there. He had, therefore, refused to sign the seizure record of the package and had requested a DNA or fingerprint forensic analysis of the package.

11. After the questioning of the applicant, the Deputy State Attorney requested the trial court to call three police officers, J.M., A.B. and S.J.-V., who had been present at the scene, to give evidence. F.M.’s defence lawyer asked the trial court to call three other persons, I.Š., U.V. and T.M., who had also been present at the scene, to give evidence. The applicant and his defence lawyer agreed with the submissions of the Deputy State Attorney and F.M.’s defence lawyer, and made no submissions of their own.

12. At the same hearing, the Rijeka Municipal Court granted the parties’ requests and decided to hear the three police officers and two other witnesses, I.Š. and U.V.

13. Another hearing was held on 4 December 2006, at which the applicant again denied all the charges against him. The three police officers appeared at the hearing, but the other two witnesses did not, because U.V. was studying abroad and I.Š. was serving in the army.

14. At the hearing, police officer A.B. testified that during a regular patrol in the area they had seen a group of young people hanging about. When they had approached them he had seen the applicant making a move as if he was about to tie his shoelace and at that moment throwing a package into a rubbish bin. They had found the package in the bin and saw that it contained a green herbal substance.

15. Police officer J.M. also testified that he had seen the applicant throwing a package into the rubbish bin while he was making a move as if he was about to tie his shoelace. However, J.M. had then examined the bin and found the package in it. There were also some beer cans in the bin, but

the package was on top of the content of the bin. He excluded any possibility that the applicant had thrown a beer can into the bin, because he had seen the applicant throwing the package.

16. Police officer S.J.-V. testified to the same effect as the other police officers. He confirmed that he had seen the applicant throwing a piece of newspaper into the rubbish bin, which one of his colleagues had then found in the bin.

17. After the police officers had been questioned, the Deputy State Attorney made no further request for the taking of evidence, while the defence insisted on witnesses I.Š., U.V. and J.M. being questioned. The trial court dismissed the request for those witnesses to be heard and concluded the hearing, finding that all relevant facts had been sufficiently established.

18. On the same day, the Rijeka Municipal Court found the applicant guilty and sentenced him to a suspended sentence of three months' imprisonment with one year's probation. The Rijeka Municipal Court relied on the witness statements of the police officers, seizure records and a forensic expert report confirming that the green substance was marijuana. In connection with the refusal to take further evidence, that court noted:

"This court dismissed the defence's request for witnesses I.Š., U.V. and J.M. to be questioned, since it considered that all the relevant facts had been sufficiently established and that therefore questioning of these witnesses would be redundant. The request of the second accused, Zlatko Topić, for a fingerprint analysis of the package, was also dismissed since, given all the established facts, taking of that evidence would also be redundant."

19. On 27 December 2006 the applicant lodged an appeal against the first-instance judgment of the Rijeka Municipal Court, arguing that without witnesses I.Š., U.V. and J.M. being questioned and a fingerprint forensic analysis it was impossible to draw any conclusions on the allegation that the applicant had thrown the package containing drugs into the rubbish bin.

20. In the meantime, the minor-offences proceedings instituted against the applicant before the Rijeka Minor Offences Court (*Prekršajni sud u Rijeci*) concerning the same event were stayed on 29 August 2006 pending the outcome of the criminal proceedings, and then on 21 December 2007 discontinued as time-barred.

21. On 9 April 2009 the Bjelovar County Court (*Županijski sud u Bjelovaru*), as the court of appeal, having analysed the applicant's defence and all the evidence from the case file, dismissed the applicant's appeal and upheld the first-instance judgment of the Rijeka Municipal Court. The relevant part of the judgment reads:

"... The first-instance court correctly dismissed the request of the defence to take further evidence by questioning persons who had been in the accused's company and for a fingerprint analysis of the package to be commissioned. The questioning of the witnesses was an irrelevant request within the meaning of Article 322 § 4(2) of the Code of Criminal Procedure, and the fingerprint analysis was inapplicable, within the

meaning of Article 322 § 4(3) of the Code of Criminal Procedure, given that traces of fingerprints had never been retrieved from the package.”

22. On 9 October 2009 the applicant lodged a constitutional complaint before the Constitutional Court (*Ustavni sud Republike Hrvatske*), reiterating his arguments that his defence rights had been violated by the refusal of the trial court to hear witnesses for the defence.

23. On 13 January 2010 the Constitutional Court declared the applicant’s constitutional complaint inadmissible as manifestly ill-founded. The decision was served on the applicant’s representative on 12 February 2010.

II. RELEVANT DOMESTIC LAW

24. The relevant provision of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette nos. 56/1990, 135/1997, 8/1998, 113/2000, 124/2000, 28/2001, 41/2001, 55/2001, 76/2010, 85/2010) reads as follows:

Article 29

“In the determination of his rights and obligations or of any criminal charge against him, everyone is entitled to a fair hearing within a reasonable time by an independent and impartial court established by law.

In case of any criminal charge brought against him, the suspect, defendant or accused shall have the following rights ...

- to question or to have witnesses for the prosecution questioned and to have witnesses for the defence questioned under the same conditions as witnesses for the prosecution ...”

25. The relevant provision of the Criminal Code (*Kazneni zakon*, Official Gazette nos. 110/1997, 27/1998, 129/2000, 51/2001, 105/2004, 84/2005) provides:

Article 173

“(1) Whoever unlawfully possesses substances which are proscribed as narcotics shall be fined or sentenced to a term of imprisonment not exceeding one year.”

26. The relevant provisions of the Code of Criminal Procedure in force at the time (*Zakon o kaznenom postupku*, Official Gazette nos. 110/1997, 27/1998, 58/1999, 112/1999, 58/2002, 143/2002, 63/2002, 62/2003 and 115/2006) provided:

Article 321

“(1) Taking of evidence concerns matters which the trial court considers relevant for the judgment ...”

Article 322

“(1) The parties and the victim may lodge requests for the taking of further evidence up to the end of the hearing ...

(4) A request for the taking of evidence may be dismissed if ..

2) if the facts of the matter at issue have already been established or are irrelevant, or if there is no link between the matter the facts of which are supposed to be established and the operative matters in the case, or if such a link cannot be established because of some legal impediment (irrelevant request)

3) if there is a suspicion that with the proposed evidence the facts of the relevant matter could either not be established at all or this could be done only with significant difficulties, or if the evidence at issue could not have been obtained in the course of the proceedings and it is probable that it cannot be obtained within a reasonable time (inapplicable request) ...”

27. The relevant provisions of the amended Code of Criminal Procedure (*Zakon o kaznenom postupku*, Official Gazette nos. 152/2008, 76/2009, 80/2011, 121/2011, 91/2012, 143/2012) provide:

Article 502

“... ”

(2) The relevant provisions concerning the reopening of the criminal proceedings shall be applicable in the case of a request for revision of any final courts’ decision in connection with the final judgment of the European Court of Human Rights by which, in respect of the defendant, a violation of the rights and freedom under the Convention for the Protection of Human Rights and Fundamental Freedoms has been found.

(3) The request for reopening of the proceedings in connection with the final judgment of the European Court of Human Rights can be lodged within a thirty-day time limit starting from the moment of the finality of the judgment of the European Court of Human Rights.”

Article 574

“... ”

(2) If prior to the entry into force of this Code a decision was adopted against which a legal remedy is allowed pursuant to the provisions of the legislation relevant to the proceedings [in which the decision was adopted], ..., the provisions of that legislation shall be applicable [to the proceedings concerning the remedy], unless otherwise provided under this Code.

(3) Articles 497-508 of this Code shall be accordingly applicable to the requests for the reopening of the criminal proceedings made under the Code of Criminal Procedure (Official Gazette nos. 110/1997, 27/1998, 58/1999, 112/1999, 58/2002, 143/2002, 62/2003, and 115/2006)."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (d) OF THE CONVENTION

28. The applicant complained that the criminal proceedings against him had been unfair because he had been deprived of an opportunity to prove his defence and had not been able to obtain the attendance of witnesses on his behalf under the same conditions as witnesses against him, as provided in Article 6 §§ 1 and 3 (d) of the Convention, which reads as follows:

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

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

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

A. Admissibility

1. The parties' arguments

29. The Government submitted that the applicant had failed to properly exhaust domestic remedies as he had not sufficiently reasoned his constitutional complaint. The Constitutional Court had therefore declared his constitutional complaint inadmissible as manifestly ill-founded. In addition, the applicant had failed to lodge criminal and disciplinary complaints against the police officers.

30. The applicant argued that during the proceedings he had properly exhausted all available domestic remedies including the constitutional complaint before the Constitutional Court, which had not been declared inadmissible on any formal ground but because the Constitutional Court had considered it to be manifestly ill-founded.

2. The Court's assessment

31. The Court reiterates that, in accordance with Article 35 § 1 of the Convention, it may only deal with an issue after all domestic remedies have been exhausted. The purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, for example, *Hentrich v. France*, 22 September 1994, § 33, Series A no. 296-A, and *Remli v. France*, 23 April 1996, § 33, *Reports* 1996-II).

32. Nevertheless, the obligation to exhaust domestic remedies requires only that an applicant make normal use of remedies which are effective, sufficient and accessible in respect of his Convention grievances (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004, and *John Sammut and Visa Investments Limited v. Malta* (dec.), no. 27023/03, 28 June 2005). The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness.

33. Therefore, Article 35 § 1 does not require that recourse should be had to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI, and *Barta v. Hungary*, no. 26137/04, § 45, 10 April 2007). Remedies available to a litigant at the domestic level are considered effective if they prevent the alleged violation or prevent it from continuing, or if they provide adequate redress for any violation that has already occurred (see *Mifsud v. France* (dec.) [GC], no. 57220/00, § 17, ECHR 2002-VIII).

34. The Court notes that in the course of the criminal proceedings against him the applicant used all available domestic remedies, including the constitutional complaint before the Constitutional Court, arguing that his right to a fair trial had been violated by the refusal of the Rijeka Municipal Court to hear witnesses for his defence. It follows that in the course of the domestic proceedings the applicant afforded the domestic authorities sufficient opportunity to address his Convention grievances.

35. As to the Government's argument that the applicant had failed to lodge criminal and disciplinary complaints against the police officers, the Court notes that the applicant's complaint concerns only the alleged lack of fairness of the criminal proceedings at issue. In the Court's view, such issues should be considered in the context and course of those proceedings and not in pursuing a number of other proceedings (see *Erkapić v. Croatia*, no. 51198/08, § 64, 25 April 2013).

36. Against the above background, the Court rejects the Government's objection.

37. The Court considers that this 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

1. The parties' arguments

38. The applicant argued that the criminal proceedings against him had been unfair because the trial court had based its decision only on the evidence adduced by the prosecution. At the same time his request for witnesses to be examined and for a fingerprint analysis to be commissioned had been dismissed. The applicant explained that the trial court had at first granted his request for witnesses I.Š., U.V. and J.M. to be questioned, but then, when it had heard the police officer's statement, it changed its decision. This consequently, in view of the fact that the judgment had been based only on the evidence given by the police officers, rendered the whole proceedings unfair. There had been no reason for not hearing the witnesses I.Š., U.V. and J.M., who could have provided relevant information concerning the case, and the trial court had failed to take all necessary measures to secure their presence at the trial. Lastly, the applicant pointed out that the relevant facts concerning the accusations against him had not been sufficiently established. He therefore considered, despite acknowledging that it was for the trial court to decide which evidence to take, that the proceedings against him had fallen short of the requirements of a fair trial.

39. The Government considered that the criminal proceedings against the applicant, taken as a whole, had been fair. In particular, the Government pointed out that the applicant had participated effectively in the proceedings, that he had been legally represented, and that he had had every opportunity to present all his evidence and arguments before the trial court and object to the evidence of the prosecution. He had also had access to all relevant materials from the case file and an opportunity to question all the witnesses against him. In the Government's view, all the decisions of the domestic authorities had been sufficiently reasoned and had not disclosed any arbitrariness. As regards the applicant's complaints that the trial court had not heard his witnesses, the Government pointed out that the trial court had carefully examined whether the questioning of witnesses was necessary and after it had found that all relevant facts had been sufficiently established it had dismissed the request for those witnesses to be questioned. The domestic courts had provided sufficient reasons for their decisions, and there had been no breach of the applicant's right to a fair trial in this respect.

2. *The Court's assessment*

(a) **General principles**

40. The Court reiterates that the guarantees contained in Article 6 § 3, including those enunciated in sub-paragraph (d), are constituent elements, amongst others, of the concept of a fair trial set forth in Article 6 § 1 (see *Bönisch v. Austria*, 6 May 1985, § 29, Series A no. 92). Its essential aim, as is indicated by the words “under the same conditions”, is full “equality of arms” in the matter. With this proviso, it leaves it to the competent national authorities to decide upon the relevance of proposed evidence, in so far as this is compatible with the concept of a fair trial, which dominates the whole of Article 6 (see *Engel and Others v. the Netherlands*, 8 June 1976, § 91, Series A no. 22, and *Gregačević v. Croatia*, no. 58331/09, § 60, 10 July 2012).

41. The admissibility of evidence is primarily a matter for regulation by national law. The Court's task under the Convention is not to give a ruling as to whether statements of witnesses were properly admitted as evidence, but rather to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (see, among many others, *Van Mechelen and Others v. the Netherlands*, 23 April 1997, § 50, *Reports of Judgments and Decisions* 1997-III). In particular, “as a general rule, it is for the national courts to assess the evidence before them as well as the relevance of the evidence which defendants seek to adduce ... Article 6 § 3 (d) leaves it to them, again as a general rule, to assess whether it is appropriate to call witnesses” (see *Vidal v. Belgium*, 22 April 1992, § 33, Series A no. 235-B).

42. It is accordingly not sufficient for a defendant to complain that he has not been allowed to question certain witnesses; he must, in addition, support his request by explaining why it is important for the witnesses concerned to be heard and their evidence must be necessary for the establishment of the truth (see *Borisova v. Bulgaria*, no. 56891/00, § 46, 21 December 2006). Thus, when the applicant has made a request to hear witnesses which is not vexatious, and which is sufficiently reasoned, relevant to the subject matter of the accusation and could arguably have strengthened position of the defence or even led to the applicant's acquittal, the domestic authorities must provide relevant reasons for dismissing such request (see *Polyakov v. Russia*, no. 77018/01, §§ 34-35, 29 January 2009; and *Gregačević*, cited above, § 68).

(b) **Application of these principles to the present case**

43. The Court notes that from the very initial stages of the proceedings the applicant contended that the package found in the rubbish bin did not belong to him, which was why he had refused to sign the seizure record of

the package and requested a forensic analysis in order to obtain evidence as to whether he had had any contact with the package (see paragraphs 9 and 10 above). He also argued that he had in fact thrown a beer can into the bin, and in support of his arguments he insisted that three persons, eyewitnesses to the event, be questioned (see paragraphs 11 and 17 above). In denying the charges against him the applicant insisted throughout the proceedings that he had thrown a beer can into the rubbish bin and not the package containing drugs.

44. In this respect the Court notes that one of the police officers who testified before the trial court, in fact the one who found the package, confirmed that he had also found beer cans in the bin, thus making the applicant's line of defence not fully vexatious or improbable (see paragraph 15 above).

45. Accordingly, the evidence of the police officers, as witnesses for the prosecution, could have been refuted by the statements of the other three eyewitnesses (see *Borisova*, cited above, § 47). In the absence of any material evidence such as fingerprint or DNA traces, which were never retrieved from the package although the defence requested it, those witness statements could have played a significant role in strengthening the position of the applicant's defence or even led to his acquittal (see, *inter alia*, *Dorokhov v. Russia*, no. 66802/01, § 74, 14 February 2008), given that the criminal court is bound by the *in dubio pro reo* principle (see *Melich and Beck v. the Czech Republic*, no. 35450/04, § 49, 24 July 2008).

46. In this respect the Court reiterates that it is not its task to decide on the applicant's guilt or innocence or to establish whether the domestic courts have correctly established the relevant facts and applied the relevant law, but to examine whether the applicant had guarantees of a fair trial (see *Melich and Beck*, cited above, § 50). It therefore confines itself to noting that the applicant's request for the eyewitnesses to the event to be heard was not vexatious, that it was relevant to the subject matter of the accusation, and that it could arguably have strengthened the position of the defence or even led to the applicant's acquittal, had it been confirmed that he had in fact thrown a beer can and not the package containing drugs into the rubbish bin (see *Polyakov*, cited above § 34).

47. However, the trial court dismissed the applicant's request by merely noting that all the relevant facts had been sufficiently established (see paragraphs 17 and 18 above), which cannot be considered a reasoned decision in itself (see *Gregačević*, § 56, and *Polyakov*, § 35, cited above), and could suggest that the witness statements heard by the domestic court were one-sided (see *Borisova*, cited above, § 48).

48. The Court therefore considers that by dismissing all requests by the defence and accepting all the prosecution arguments and evidence the trial court created an unfair advantage in favour of the prosecution and

consequently deprived the applicant of any practical opportunity to effectively challenge the charges against him.

49. There has accordingly been a violation of Article 6 §§ 1 and 3 (d) of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

50. Lastly, the applicant complained under Article 4 of Protocol No. 7, that he had been tried in minor-offences proceedings and in criminal proceedings for the same offence, contrary to the *ne bis in idem* principle.

51. The Court notes that in none of the avenues he pursued by way of remedies before the national authorities during the proceedings at issue did the applicant raise any complaints as regards the alleged violation of the *ne bis in idem* principle. In these circumstances, the Court cannot speculate what the outcome of these proceedings would have been had he raised the same complaint he is now bringing before the Court.

52. In this respect the Court reiterates that a complaint submitted to it must first have been made to the appropriate national courts, at least in substance, in accordance with the formal requirements of domestic law and within the prescribed time-limits. To hold otherwise would not be compatible with the subsidiary character of the Convention system (see *Gavril Yosifov v. Bulgaria*, no. 74012/01, § 42, 6 November 2008).

53. Accordingly, since the applicant failed to bring the complaints he has raised before the Court before the national authorities, he failed to exhaust the domestic remedies as required under Article 35 § 1 of the Convention.

54. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

57. The Government considered the applicant’s claim excessive, unfounded and unsubstantiated.

58. Having regard to all the circumstances of the present case, the Court accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to him.

B. Costs and expenses

59. The applicant also claimed 10,000 Croatian kunas (HRK) for the costs and expenses incurred before the Court.

60. The Government considered the applicant's claim unfounded and unsubstantiated.

61. 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, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,300 for costs and expenses in the domestic proceedings before the Court plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

62. 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 lack of fairness of the criminal proceedings, under Article 6 §§ 1 and 3 (d) of the Convention, admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Croatian kuna at the rate applicable at the date of settlement:

- (i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (ii) EUR 1,300 (one thousand three hundred 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 10 October 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Isabelle Berro-Lefèvre
President