



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

THIRD SECTION

CASE OF CIANTAR AND MAXKIM LTD v. MALTA

(Application no. 7448/15)

JUDGMENT

STRASBOURG

12 February 2019

FINAL

12/05/2019

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

In the case of Ciantar and Maxxim Ltd v. Malta,

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

Branko Lubarda, *President*,

Vincent A. De Gaetano,

Helen Keller,

Dmitry Dedov,

Pere Pastor Vilanova,

Georgios A. Serghides,

Jolien Schukking, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 22 January 2019,

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

PROCEDURE

1. The case originated in an application (no. 7448/15) against the Republic of Malta lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Mr Emanuel Ciantar, a Maltese national, and Maxxim Limited (C19754), a limited liability company registered in Malta (“the applicants”), on 5 February 2015.

2. The applicants were represented by Dr J. Brincat a lawyer practising in Marsa. The Maltese Government (“the Government”) were represented by their Agent, Dr P. Grech, Attorney General.

3. On 8 February 2017 notice of the complaints concerning Article 1 of Protocol No. 1 and Article 6 of the Convention was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The first applicant was born in 1964 and lives in Qormi. The second applicant is a limited liability company incorporated in 1996 and registered in Marsa, Malta. The second applicant is owned by the first applicant.

A. First set of criminal proceedings

5. On 27 July 2011, the Court of Magistrates as a court of criminal judicature found M. (the first applicant's son, who lives under the same roof as the first applicant) guilty of involuntary grievous bodily harm of two minors, and of driving a Peugeot van with registration number HBD096 (hereinafter referred to as "the Peugeot") without a licence. The Peugeot was registered in the name of Maxkim Limited (the second applicant). M. was not an employee of the company. The Court of Magistrates sentenced M. to a term of imprisonment and disqualified him from obtaining a driving licence for a period of time. Furthermore, it ordered the confiscation of the Peugeot, in accordance with the provisions of Article 3 (2) (c) (i) of the Motor Vehicles Insurance (Third Party Risks) Ordinance (hereinafter "the Ordinance") (see Relevant Domestic Law), since this was more than the third time in which M. was being found guilty of a crime under Article 3 of the Ordinance.

6. M. appealed the decision.

7. On 24 October 2011, the Court of Criminal Appeal reversed the first-instance court judgment in part, namely lowering the disqualification period to six months. The rest of the judgment was confirmed. As to the confiscation of the Peugeot, the Court of Criminal Appeal noted that the confiscation was a result of the above-mentioned provision of law which provided that both the person as well as the vehicle must be insured.

8. The authorities eventually took physical possession of the Peugeot. However, by this time, the Peugeot had been returned to the importer following an agreement between him and the second applicant which provided that the latter would not pay any further instalments in connection with the hire purchase agreement with which the car had been acquired. The Government submitted that since this had never happened the vehicle remained owned by the importer, who was in 2018 pursuing proceedings before the domestic courts, and it therefore followed that the second applicant could not be considered to have had a possession.

B. The second set of criminal proceedings

9. On 6 January 2012 the Court of Magistrates as a court of criminal judicature found M. guilty under Article 61(1) of the Traffic Regulations Ordinance of driving away, with the intention to use, a vehicle of the make Toyota (Vitz) with registration number KIM324 (hereinafter referred to as "the Toyota"). The Toyota was registered in the name of the first applicant. It is not disputed that the Toyota was owned by him. The Court of Magistrates did not order the confiscation of the Toyota (which had already been seized by the police since 9 November 2011) on the ground that M. had used it without the consent of the owner, and thus ordered its release.

10. Despite the above finding, the car was not released by the authorities.

11. The Attorney General (hereinafter referred to as “the AG”) appealed against part of the decision of the Court of Magistrates, requesting the Court of Criminal Appeal to order the confiscation of the Toyota; he also appealed with respect to the punishment imposed.

12. It appears that during these appeal proceedings the first applicant requested the court to release the Toyota. He argued that there was no reason for the Toyota not to be returned to him, since the first-instance court had not ordered its confiscation and, according to law, the AG’s appeal did not suspend the execution of the judgment of the first-instance court (Article 416(4) of the Criminal Code) (See Relevant Domestic Law). The Court of Criminal Appeal rejected this request.

13. On 26 March 2014 the Court of Criminal Appeal rejected the AG’s appeal *in toto*.

14. On 27 March 2014 the Toyota was returned to the first applicant.

C. Constitutional Redress Proceedings

1. First-instance

15. In the meantime, on 28 November 2012, the applicants (Mr Ciantar in his name and on behalf of Maxkim Limited) filed proceedings before the Civil Court (First Hall) in its constitutional competence. They claimed, *inter alia*, that both the above-mentioned criminal proceedings against M. violated their rights under Articles 6 of the Convention and Article 1 of Protocol No. 1.

16. It was argued, in connection with Article 1 of Protocol No. 1, that the confiscation of the Peugeot in the first set of criminal proceedings and the decision of the Court of Criminal Appeal in the second set of criminal proceedings rejecting the request to release the Toyota, pending the appeal proceedings, had been ‘unlawful’.

17. Under Article 6 the applicants argued that they had never been accused of a crime and had not had the opportunity to defend themselves before a court; however, they had nonetheless suffered the imposition of a penal punishment upon them. Furthermore, the Court of Criminal Appeal had refused to grant back to the first applicant possession of the Toyota in violation of the law.

18. The applicants requested that the two vehicles be released, and that they be awarded just satisfaction for the violations suffered and the lost use of the two vehicles.

19. On 23 October 2013 the court rejected the applicants’ claims except for that concerning the release of the Toyota. It ordered the Toyota to be released immediately (since the Court of Magistrates had not ordered its

confiscation), at least until the decision of the Court of Criminal Appeal on the AG's appeal, which was still pending at the time.

20. In regard to the alleged violation of Article 1 of Protocol No. 1, the court held that the confiscation of the Peugeot had been ordered by a final judgment of the Court of Criminal Appeal in the first set of criminal proceedings and therefore there could be no doubt that the confiscation was in compliance with the law (Article 3 of the Ordinance). It noted that Article 3 was aimed at protecting innocent citizens from abuse by people who broke the law by driving vehicles without a licence or without insurance. The fact that the provision ordered the confiscation of a vehicle used by a person caught driving without a licence or without insurance, even if the vehicle belonged to a company the perpetrator worked for, or the vehicle belonged to a family member with whom that perpetrator lived, struck the necessary balance and was an appropriate deterrent to the commission of crime. It followed that it was not in violation of the invoked provisions.

21. Regarding the claim for damages, the court concluded that the applicants must demand them from M., since M. was the one who had violated the law leading to the institution of the criminal proceedings with the ensuing consequences.

2. Appeal

22. On 7 November 2013 the applicants filed an appeal before the Constitutional Court. It was argued that in both sets of criminal proceedings the applicants had been unlawfully deprived of their property. According to the applicants, Article 3 was inapplicable to the confiscation of the Peugeot, which could only be possible if, differently from M., the accused had been an employee of Maxkim Limited. The applicants further contended that the withholding of the Toyota by the Court of Criminal Appeal in the second set of criminal proceedings lacked a legal basis, which had not been remedied by the temporary order of the first-instance constitutional jurisdiction. Further, the latter court had failed to effectively consider their complaints under Article 6 of the Convention.

23. The AG also filed an appeal.

24. On 11 August 2014 the Constitutional Court rejected the AG's appeal and declared that the applicants had suffered a violation of their rights as protected under Article 1 of Protocol No. 1. In connection with both vehicles, the court found that Article 3 of the Ordinance violated the same right in so far it permitted the confiscation of a vehicle, without the owner of the vehicle being given the opportunity to effectively contest the confiscation. Article 3 of the Ordinance was therefore declared null and void in regard to such consequences. The Constitutional Court ordered the release of both vehicles, and the payment of non-pecuniary damages in the sum of 300 euros (EUR) to each of the applicants. The rest of the

applicants' claims were rejected. The cost of the appeal proceedings before the Constitutional Court filed by the applicants were to be borne in the proportion of one fifth by the applicants and four fifths by the AG, and the costs of the appeal proceedings before the Constitutional Court filed by the AG were to be borne by him. The applicants' share of costs amounted to EUR 1,129.46 (of which 425.79 were registry fees).

25. The Constitutional Court noted that, simply because the courts in the first set of criminal proceedings had applied the law did not necessarily mean that there had not been a violation of the applicants' rights under Article 1 of Protocol No. 1. While the confiscation of the Peugeot had been lawful, it had however placed a disproportionate and excessive burden upon the applicant [company] thereby leading to a violation of its rights (especially since the applicants had no possibility of defending themselves in order to prevent the confiscation of the vehicle which was mandatory). Furthermore, there existed no adequate or effective remedy to prevent the confiscation of the Peugeot, and third parties were not protected by any procedural safeguards.

26. As for the Toyota, the same last-mentioned considerations applied. Furthermore, as a result of the decision of the Court of Criminal Appeal in the second set of criminal proceedings, the Constitutional Court concluded that the seizure of that vehicle had been unnecessary and could not be justified as having been done in the interests of justice since no third party had suffered any damage.

27. The confiscation/seizure of both vehicles amounted to, according to the Constitutional Court, a lack of balance between the interests of the general community and the rights of the applicants. Therefore a violation of Article 1 of Protocol No. 1 had occurred.

28. In regard to the alleged violation of Article 6 of the Convention, the court noted that the fact that measures resulting from an act for which a third party (in this case M.) was prosecuted, affecting in an adverse manner the property rights of the applicants, could not in themselves lead to the conclusion that, during the course of the criminal proceedings complained of, any "criminal charge", for the purpose of Article 6, was brought against the applicants. Therefore, the court concluded that Article 6 in its criminal head was inapplicable and the applicants had not invoked this provision under its civil head. Thus, the claim of a lack of access to court had been unfounded. Furthermore, the court concluded that Article 3 of the Ordinance did not create any presumption of guilt and the applicants had not been found guilty of a crime.

D. Other events

29. In the meantime on 15 October 2012 the importer of the Peugeot started civil proceedings against the applicants for fraudulent behaviour and

bad faith when they agreed to return the Peugeot which was potentially subject to a confiscation order. The importer also started proceedings against the Commissioner of Police, as a result of which the above-mentioned civil proceedings were adjourned *sine die*.

30. On an unspecified date following the constitutional redress proceedings, the Peugeot was released but remained under the authority of the court due to the above-mentioned issues, and payment of the award of EUR 300 was made to each applicant. On 9 January 2017 the Government paid their share of expenses of the constitutional redress proceedings.

II. RELEVANT DOMESTIC LAW

31. In so far as relevant, Article 3 of the Motor Vehicles Insurance (Third-Party Risks) Ordinance, Chapter 104 of the Laws of Malta, reads as follows:

“(1) Subject to the provisions of this Ordinance, it shall not be lawful for any person to use or to cause or permit any other person to use a motor vehicle on a road unless there is in force in relation to the user of the vehicle by that person or that other person, as the case may be, such a policy of insurance in respect of third-party risks as complies with the requirements of this Ordinance.

(1A) It shall be presumed that there was not a policy of insurance in force in terms of subarticle (1), unless the person charged with an offence under subarticle (1) shall show the contrary through the production of a certificate of insurance issued under article 4(4).

(1B) It shall be a valid defence, in prosecution for an offence under subarticle (1), for the defendant to prove that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

(2) If a person acts in contravention of this article he shall, on conviction, be liable -

(a) in the case of a first offence, to a fine (*multa*) of not less than two thousand and three hundred and twenty nine euro and thirty-seven cents (€2,329.37) but not exceeding four thousand and six hundred and fifty-eight euro and seventy-five cents (€4,658.75) or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment;

(b) in the case of a second offence, to a fine (*multa*) of not less than four thousand and six hundred and fifty-eight euro and seventy-five cents (€4,658.75) but not exceeding five thousand and eight hundred and twenty-three euro and forty-three cents (€5,823.43) or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment;

(c) in the case of a third or subsequent offence, to a fine (*multa*) of not less than five thousand and eight hundred and twenty-three euro and forty-three cents (€5,823.43) but not exceeding six thousand and nine hundred and eighty-eight euro and twelve cents (€6,988.12) or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment, and

(i) where the offence consists in the use of a motor vehicle on a road by a person who is the owner of the motor vehicle or an employee of, or a member of the family of and living with, the owner of the motor vehicle, when there is not in force a policy

of insurance in respect of such vehicle as complies with the requirements of this Ordinance, the court shall, in addition to the punishments laid down in this sub-paragraph, order the forfeiture of the motor vehicle;

(ii) where the offence, as aforesaid, is committed by any other person, the court shall, in addition to the punishments laid down in this subparagraph, impose a further fine (*multa*) equivalent to the value of the motor vehicle.”

32. Article 61(1) of the Traffic Regulation Ordinance, Chapter 65 of the Laws of Malta provides:

“Any person who merely with the intention of making temporary use thereof drives away any vehicle, whether propelled by mechanical power or by any other means, without having either the consent of the owner thereof or other lawful authority, shall, on conviction, be liable to imprisonment for a term not exceeding six months or to a fine (*multa*) not less than one hundred and sixteen euro and forty-seven cents (116.47) but not exceeding two hundred and thirty-two euro and ninety-four cents (232.94) or to both such imprisonment and fine.”

33. Article 416(4) of the Criminal Code, Chapter 9 of the Laws of Malta, reads as follows:

“In no case shall the appeal entered by the Attorney General or by the complainant operate as a stay of execution of the judgment.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

34. The applicants complained under Article 1 of Protocol No. 1 to the Convention that they had been unlawfully deprived of their property and had not received adequate compensation for the violation of this provision upheld by the Constitutional Court. They alleged a violation of their right under Article 6 of the Convention arguing that they did not have access to a court to challenge the measure depriving them of, or interfering with, their property.

35. The Government contested that argument.

36. The Court considers that the application should be analysed solely under Article 1 of Protocol No. 1 to the Convention (see *S.C. Service Benz Com S.R.L. v. Romania*, no. 58045/11, § 21, 4 July 2017 and *Andonoski v. the Former Yugoslav Republic of Macedonia*, no. 16225/08, § 19, 17 September 2015). That provision reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in

accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

37. The Government submitted that the applicants had lost victim status as the Constitutional Court had acknowledged the violation and awarded appropriate redress. In particular, the Constitutional Court had ordered the release of both vehicles, and the payment of non-pecuniary damage to the tune of 300 euros (EUR) to each of the applicants. In the Government’s view the fact that most of the costs (4/5) were to be paid by the Attorney General constituted further redress to the applicants. They also noted that the applicants had been made to bear part costs because some of their grievances on appeal had been rejected. They also contested the fact that the vehicles depreciated between 2011 when they were confiscated and 2014 when the Constitutional Court delivered judgment. Furthermore, the Government submitted that once the Peugeot was released it was deposited under the authority of the courts as there was uncertainty as to who the owner of the vehicle was. It later turned out that the hire purchase agreement of the Peugeot had stipulated that the vendor (the importer) remained the owner of the vehicle until the purchaser (the second applicant) paid the price in its entirety. The Government submitted that since this had never happened the vehicle remained owned by the importer, who was in 2018 pursuing proceedings before the domestic courts, and it therefore followed that the second applicant could not be considered to have had a possession.

38. The applicants claimed that they were still victims of the violation upheld by the domestic courts, and that they were actually in a worse position than before, in so far as they received EUR 600, jointly, in non-pecuniary damages but had to pay almost double that sum in costs. Moreover, no pecuniary damage had been awarded by the Constitutional Court, despite the evident depreciation of the vehicles during the time they were held by the domestic authorities. The applicant company admitted that it had returned the vehicle to the importer to avoid paying further instalments and that the confiscation following the Court of Criminal Appeal’s decision occurred at a time when the Peugeot was in the importer’s possession.

39. The Court reiterates that the adoption of a measure favourable to the applicant by the domestic authorities will deprive the applicant of victim status only if the violation is acknowledged expressly, or at least in substance, and is subsequently redressed (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178 et seq. and § 193, ECHR 2006-V, and *Brumărescu v. Romania* [GC], no. 28342/95, § 50, ECHR 1999-VII). Whether the redress given is effective will depend, among other things, on the nature of

the right alleged to have been breached, the reasons given for the decision and the persistence of the unfavourable consequences for the persons concerned after that decision (see, for example, *Freimanis and Līdums v. Latvia*, nos. 73443/01 and 74860/01, § 68, 9 February 2006). The redress afforded must be appropriate and sufficient. Whether an individual has victim status may also depend on the amount of compensation awarded by the domestic courts and the effectiveness (including the promptness) of the remedy affording the award (see, for example, *Gera de Petri Testaferrata Bonici Ghaxaq v. Malta*, no. 26771/07, § 53, 5 April 2011, and *Frendo Randon and Others v. Malta*, no. 2226/10, §§ 36-38, 22 November 2011, concerning Article 1 of Protocol No. 1; *Scordino*, cited above, § 202, in respect of Article 6 of the Convention; and *Gäfgen v. Germany* [GC], no. 22978/05, §§ 118 and 119, ECHR 2010, concerning Article 3 of the Convention).

40. In the present case the Court notes that the first criterion, namely acknowledgment of a violation, has been met. As to the second criterion, namely, redress afforded, the Court reiterates that appropriate redress requires both pecuniary damages (see *Frendo Randon*, cited above, § 37, and *Azzopardi v. Malta*, no. 28177/12, § 33, 6 November 2014) and non-pecuniary damages to be granted when an individual is deprived of, or suffers an interference with, his or her possessions, contrary to Article 1 of Protocol No. 1 (see *Gera de Petri Testaferrata Bonici Ghaxaq*, cited above, § 53). In the present case, the Constitutional Court did not provide for pecuniary damages. Furthermore, while the applicants jointly received EUR 600 in compensation for non-pecuniary damages, EUR 1,129.46 had to be deducted from that award, being the sum the applicants had to pay in costs, jointly. Therefore, the compensation granted did not cover the costs of the proceedings.

41. Bearing in mind the domestic court's acknowledgment, as well as the fact that it now transpires that when the Peugeot was confiscated it did not belong to the second applicant (see paragraph 8 above) and thus the second applicant suffered no consequences, the Court considers that the second applicant is no longer a victim of any alleged violation, and therefore the Government's objection is upheld.

42. The same cannot be said in relation to the complaint concerning the Toyota owned by the first applicant, which, as established by the Constitutional Court, was retained in breach of the Convention (see paragraph 27 above) for more than two years. In this respect, the order for costs having absorbed any compensation awarded (compare *Apap Bologna v. Malta*, no. 46931/12, § 45, 30 August 2016), the first applicant in effect received no redress, for the violation suffered. The Government's objection is therefore dismissed.

43. In conclusion, the Court finds that the second applicant can no longer claim to be the victim of the violation complained of. The complaint

in its respect is therefore incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4 of the Convention.

44. Conversely, the first applicant retains his victim status. Furthermore, his complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

45. The first applicant submitted that he had suffered a violation of Article 1 of Protocol No. 1 to the Convention, given that the decision of the Court of Criminal Appeal in the second set of criminal proceedings rejecting the applicant's request to be granted possession of the Toyota had been 'unlawful'. Moreover, the measure had not pursued any legitimate aim, except for a punitive one.

46. The Government submitted that there had not been a violation of the applicant's property rights as the taking had been lawful. The deprivation had also been in the general interest to protect the public and serve as a deterrent.

2. The Court's assessment

47. In order to be compatible with Article 1 of Protocol No. 1, an interference with the right of property must be effected "in the public interest" and "subject to the conditions provided for by law and by the general principles of international law". The interference must strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 69, Series A no. 52, and *Granitul S.A. v. Romania*, no. 22022/03, § 46, 22 March 2011).

48. Having regard to the finding of the Constitutional Court (see paragraphs 26 and 27 above), the Court considers that it is not necessary to re-examine in detail the merits of the complaint. It suffices to find that, as established by the domestic courts, the domestic authorities had failed to strike a fair balance in relation to the seizure of the Toyota.

49. There has accordingly been a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The first applicant claimed 1,000 euros (EUR) in non-pecuniary damages for the anguish suffered for being deprived of his car. He also claimed pecuniary damages in the amount of EUR 4,500 in respect of the Toyota (Vitz), representing the depreciation of the car (as established by a car dealer’s declaration submitted to the Court) during the period while it had been held by the authorities, as well as EUR 2,400 in car rentals based on quotations issued in 2011 (EUR 12 per day for 200 days). The applicant explained that he had originally started to rent another car and that after 200 days when the matter started dragging on too much, he opted to buy a new one.

52. The Government were of the view that no pecuniary damages should be awarded given that the car was returned. In any event they contested the depreciation estimate on the basis that it had not been prepared by a surveyor, and they also considered that no rental fees were due in the absence of any receipts. As to non-pecuniary damages the Government considered that since the applicants had already received EUR 300 each at the domestic level they should not be awarded more than EUR 1,000 jointly.

53. The Court notes that the claim for car rental expenses is not supported by actual receipts but only by a quotation, and therefore it has not been shown that such sums were actually incurred. That claim must therefore be dismissed in its entirety. Further, the Court considers that the claim for depreciation is inflated in view of the model of the car and the period of a little more than two years during which it was held by the authorities. Bearing in mind the above, the Court awards the first applicant EUR 3,000 in respect of pecuniary and non-pecuniary damages combined.

B. Costs and expenses

54. The applicants claimed EUR 1,254.85 for costs incurred in the domestic proceedings and EUR 4,000 for costs incurred before this Court.

55. The Government did not contest the claim for EUR 1,254.85 for costs incurred in the domestic proceedings but submitted that an award of EUR 1,500 for costs incurred before this Court was sufficient.

56. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 3,000 covering costs under all heads.

C. Default interest

57. 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 under Article 1 of Protocol No.1 concerning the first applicant admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No.1 in relation to the first applicant;
3. *Holds*
 - (a) that the respondent State is to pay the first applicant, within three months the following amounts:
 - (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage combined;
 - (ii) EUR 3,000 (three thousand 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 claim for just satisfaction.

Done in English, and notified in writing on 12 February 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Branko Lubarda
President