



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

FIRST SECTION

CASE OF NAPIJALO v. CROATIA

(Application no. 66485/01)

JUDGMENT

STRASBOURG

13 November 2003

FINAL

13/02/2004

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Napijalo v. Croatia,

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

Mr C.L. ROZAKIS, *President*,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mr E. LEVITS,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mr V. ZAGREBELSKY, *judges*,

and Mr S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 23 October 2003,

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

PROCEDURE

1. The case originated in an application (no. 66485/01) 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 citizen, Mr Dragan Napijalo (“the applicant”), on 11 January 2001.

2. The Croatian Government (“the Government”) were represented by their Agent, Ms Lidija Lukina-Karajković.

3. The applicant alleged, in particular, that the length of the civil proceedings before the Zagreb Municipal Court had exceeded the reasonable time requirement and that he had been prevented from leaving Croatia because the domestic authorities had seized his passport without reason.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

6. By a decision of 13 June 2002, the Court declared the application admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1947 and lives in Karlovac, Croatia.

A. Seizure of the applicant's passport

9. On 6 February 1999 the applicant was driving from Bosnia and Herzegovina and crossed the border to Croatia at the checkpoint at Maljevac. He was stopped by a customs officer for a routine check.

10. The applicant gives the following account of what happened at the border checkpoint. Before arriving in Croatia, the applicant and another person, K.B., had purchased four cartons of cigarettes and two litres of cooking oil.

11. At the border checkpoint they were approached by a customs officer who asked the applicant if he had anything to declare. The applicant pointed at the purchased goods, lying in the backseat of the car, inviting the customs officer to take a look. The officer then asked the applicant to show him his passport. While holding the applicant's passport the officer told the applicant that he had failed to declare the goods and thus committed a customs offence. He asked the applicant to pay a fine in the amount of two hundred Croatian Kunas (hereinafter HRK).

12. The applicant told the officer that he could not pay the fine right away because he did not have enough money on him. The officer did not return the applicant's passport and told him that he would receive his passport when he had paid the fine. The applicant then continued to Croatia.

13. The Government gave the following account of the facts. While entering Croatia the applicant failed to declare goods that he had purchased in Bosnia and Herzegovina. However, a customs officer found five cartons of cigarettes and two litres of cooking oil in the applicant's car. He routinely fined the applicant with HRK 200 [Approximately 30 euros] for a minor customs offence. The applicant was immediately given a document which stated that he was fined with HRK 200 for having failed to declare five cartons of cigarettes he was importing. The applicant signed the document. During this procedure the applicant's passport was kept by the customs officer, who had intended to return it to the applicant. However, the applicant refused to pay the fine and demonstratively drove away, leaving his passport behind.

14. On 10 February 1999 the applicant wrote from his address in Karlovac to the Ministry of Finance, Customs Administration Headquarters asking that his passport be returned.

15. On 22 February 1999 the Customs Administration replied to the applicant's address in Karlovac that the custom officers acted in accordance with law when they seized the applicant's passport because he had refused to pay the fine for a customs offence which he had committed by failing to declare goods at a border checkpoint. They relied on Sections 325 to 333 of the Customs Act which, *inter alia*, provided that a person, while crossing a customs check point, had to declare and show all goods that he was importing. Failure to declare such goods represented a customs offence. The letter also stated that since the applicant had not declared the goods that he had been importing to Croatia, he had committed a customs offence under Section 353 of the Customs Act and fined pursuant to § 2 of that Section. The applicant's passport had been kept because the applicant had refused to pay the fine. The letter contained no indication of how and when the applicant's passport would be returned.

16. Although the applicant did not pay the imposed fine no other proceedings were instituted against him for the alleged customs offence.

17. In the meantime, on 12 February 1999, the Customs Administration, apparently having decided not to institute any further proceedings against the applicant, handed over the passport to the Slunj Customs Police Department. The Police noticed, however, that the applicant was registered as living in Zagreb for which reason, on 4 March 1999, the passport was sent to the Zagreb Police Department.

18. On 5 March 1999 the Zagreb Police Department wrote to the applicant's registered address in Zagreb inviting him to collect his passport. The letter was returned. On 6 April 1999 the Zagreb Police Department wrote once more to the applicant, but the letter was again returned. The receipt showed that the applicant was unknown at that address.

19. The Police discovered subsequently that the applicant, although registered as living in Zagreb, actually lived in Karlovac. On 23 March 2001 the passport was sent to the Karlovac Police Department which invited the applicant to collect his passport. He did so on 4 April 2001.

B. Proceedings instituted by the applicant

20. Having received the Customs Administration's letter of 22 February 1999 the applicant filed a civil suit on 2 March 1999 in the Zagreb Municipal Court against the Ministry of Finance, seeking the return of his passport and damages flowing from his inability to leave Croatia. He also requested the court to adopt an interim measure and order that his passport be returned to him immediately.

21. On 13 April 1999 the applicant also filed an application in the Zagreb County Court claiming that the seizure of his passport by a customs officer was an unlawful act and that therefore, his right to freedom of

movement had been violated. He requested the court to order the Ministry of Finance to return his passport forthwith.

22. On 21 September 1999 the Zagreb County Court dismissed the applicant's claim. It found that a claim for protection from an unlawful act was permitted only if there was no other remedy available. In the opinion of the court the applicant had at his disposal another remedy - a civil action for the return of his property. Accordingly, it instructed the applicant to institute civil proceedings in a municipal court against the Ministry of Finance for the return of his passport.

23. The applicant appealed against the decision.

24. The applicant's appeal was rejected on 20 April 2000 by the Supreme Court (*Vrhovni sud Republike Hrvatske*).

25. In the meantime, at a hearing on 12 April 1999 the Zagreb Municipal Court, in the proceedings instituted on 2 March 1999, against the Ministry of Finance, separated the applicant's claim for damages from the claim for return of the passport.

26. Concerning the claim for return of the applicant's passport the next hearing was held on 11 February 2000. At that hearing the court heard the applicant and then decided to hear K.B., who was with the applicant in the car at the material time. It was furthermore agreed between the parties to adjourn the issue of damages pending the outcome of the claim for the return of the passport.

27. At a hearing on 1 December 2000 the court heard the customs officer who took the applicant's passport. It also invited the applicant to submit within thirty days a copy of the letter that he had sent to the Customs Administration as well as their reply.

28. On 23 January 2001 the applicant submitted the Customs Administration's reply of 22 February 1999.

29. At a hearing on 21 February 2001 the court heard another customs officer and once again the applicant. It then rejected the applicant's request for an interim measure finding that the applicant's main claim, i.e. to have his passport returned, was exactly the same as his request for the interim measure and that, therefore, such a request could only be decided after the court established all the relevant facts of the case.

30. On 23 February 2001 the applicant filed an application asking that the judge be removed from the case. On 7 March 2001 the President of the Zagreb Municipal Court rejected the applicant's motion.

31. The next hearing was held on 13 April 2001. The applicant informed the court that on 4 April 2001 the Karlovac Police Department had returned his passport. Therefore, he no longer sought the return of his passport but instead sought a declaratory decision to the effect that on 6 February 1999 his passport was taken from him by the Croatian authorities and returned on 4 April 2001. He also sought costs.

32. On 24 April 2001 the applicant filed submissions with the court repeating the statements and claims he made at the hearing on 13 April 2001.

33. On 16 May 2001 the applicant's counsel appeared before the judge and agreed to reformulate the applicant's claim having regard to the fact that the passport had already been returned to him.

34. The next hearing was held on 28 May 2001 during which it was formally recorded that the passport had been returned to the applicant. The applicant's counsel sought from the court permission to specify the applicant's remaining claims. The court allowed her to do so within thirty days.

35. On 7 June 2001 the applicant himself filed submissions to the court reiterating the same claims as those submitted on 24 April 2001. No additional claims were submitted by the applicant's counsel.

36. On 13 August 2001 the applicant again filed an application asking that the judge be removed from the case. The President of the court accepted the request and the case was transferred to another judge.

37. Following a hearing on 14 November 2001 the court dismissed the applicant's claims. It found that the applicant had no further legal interest in seeking a declaratory decision that his passport had been taken from him by the Croatian authorities on 6 February 1999 and then returned on 4 April 2001. The applicant was also ordered to pay the defendant's costs.

38. The applicant's subsequent appeal was dismissed and the first instance decision was upheld by the Zagreb County Court (*Županijski sud u Zagrebu*) on 10 September 2002. It held that the applicant had no legal interest in seeking a declaratory decision and that the Zagreb Municipal Court's decision on the costs of the proceedings was well-founded because the applicant had lost his case.

39. According to the applicant the proceedings concerning his claim for damages have never been resumed and on 24 January 2002 the case was closed without any decision on the merits been taken.

40. According to the Government the case has not been closed and the proceedings are still pending.

II. RELEVANT DOMESTIC LAW

41. According to Sections 34 and 35 of the Act on Travel Documents of Croatian Citizens (*Zakon o putnim ispravama hrvatskih građana* - Official Gazette no. 53/1991, hereinafter the "Act on Travel Documents") a passport will be seized when there is a reasonable suspicion that:

- a person is acting against the laws regulating customs or foreign trade.

42. Relevant parts of Section 353 of the Customs Act (*Carinski zakon*, Official Gazette no. 106/1993) provides, *inter alia*, that a person who, when

crossing a border, does not declare the goods for his or her personal use shall be fined.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

43. The applicant complained that the proceedings whereby he sought the return of his passport lasted unreasonably long. He relied on Article 6 § 1 of the Convention which, in so far as relevant, reads as follows:

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

A. Applicability of Article 6 § 1

44. The Government accepted that Article 6 § 1 is applicable to the proceedings where the applicant had sought the return of his passport. In this respect they agreed that the applicant's claim concerned a determination of his civil rights since it had been directed at a return of the applicant's property, i.e. his passport. However, they contested the applicability of Article 6 of the Convention to the part of the proceedings which had occurred after the applicant had changed his claim and had sought only a declaration that his passport had been taken from him by the Croatian authorities on 6 February 1999 and returned on 4 April 2001. They relied on the Court's case law claiming that Article 6 was not applicable to the proceedings dealing only with a procedural issue (see *Senine Vadbolski, Demonet v. France*, no. 22404/93, Commission decision of 12 October 1994).

45. The applicant did not comment on this part of the Government's observations.

46. The Court reiterates that, according to the principles laid down in its case-law (see, amongst other authorities, *Zander v. Sweden*, judgment of 25 November 1993, Series A no. 279-B, p. 38, § 22), it firstly has to be ascertained whether there was a dispute ("contestations") over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question.

47. As to the present case the Court notes that, although the applicant's passport was at a certain point returned to him, the applicant still sought apart from a declaratory decision, that he be awarded the costs.

48. The Court considers that the proceedings in question should be considered as a whole, especially having in mind that the Zagreb Municipal Court did not adopt any decision upon the applicant's initial request. Furthermore, the applicant also sought the costs that were incurred in the course of the entire proceedings.

49. The Court notes furthermore that the applicant's request to have a declaratory decision concerning the seizure of his passport was closely connected to his request for damages. In order to obtain damages in connection with the seizure of his passport, which is certainly a claim of a pecuniary nature, the applicant had an interest in having established in a civil court that such a seizure took place.

50. Therefore, in the Court's opinion, the proceedings before the Zagreb Municipal and County Court were closely connected to the applicant's claim of a pecuniary nature and decisive for the determination of his civil rights. It follows that Article 6 applies to these proceedings as a whole.

B. Compliance with Article 6 § 1

1. The Parties' submissions

51. In the event Article 6 were to be considered applicable to the proceedings as a whole, the Government accepted that the proceedings commenced on 2 March 1999 when the applicant filed his action and ended on 10 September 2002 when the applicant's appeal was dismissed by the Zagreb County Court, lasting altogether three years, six months and eight days.

52. As to the complexity of the proceedings the Government pointed out that the case had concerned an unusual issue. The applicant had contributed to the complexity because he had changed his claim after he had received his passport on 4 April 2001.

53. They submitted further that the subject matter of the applicant's case had not called for particular urgency in deciding it. They referred to the Court's case-law, arguing that the since the case did not relate to family-law matters or to payment of damages to the victims of road accidents, or involved the interests of a great number of persons or dismissal from work no special diligence was required.

54. As to the applicant's behaviour the Government argued that he had contributed to the length of proceedings because he had insisted that the proceedings be continued even after his passport had been returned to him. Furthermore, he had repeated his claim for damages, although he had known that such a claim was the subject of separate proceedings, only to

subsequently withdraw that claim. He had also submitted several applications asking that the judge be removed from the case.

55. As to the behaviour of the domestic authorities the Government contended that the Zagreb Municipal Court had proceeded with the case immediately after receiving the applicant's claim. Furthermore, it had held hearings at regular intervals.

56. The applicant disagreed with the Government and argued that a period of more than two years for determining the question of the return of his passport had exceeded the "reasonable time" requirement under Article 6 § 1 of the Convention.

2. *The Court's assessment*

57. The Court observes that it is not disputed that the proceedings commenced on 2 March 1999 and ended on 10 September 2002. The proceedings therefore lasted three years, six months and eight days.

58. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

59. As to the complexity of the case, the Court finds that the case did not involve any particular legal or factual complexity.

60. Furthermore, the Court considers that the applicant did not contribute to the length of the proceedings in a way which may be considered unreasonable or unacceptable.

61. As to the behaviour of the domestic authorities, the Court reiterates that only delays for which the State can be held responsible may justify a finding that a "reasonable time" has been exceeded (see, *inter alia*, *Monnet v. France*, judgment of 27 October 1993, Series A no. 273, p. 12, § 30 and *Šoć v. Croatia*, no. 47863/99, § 105, 9 May 2003). In the instant case the Court notes that there were two long periods of inactivity in the proceedings before the Zagreb Municipal Court, i.e. from 12 April 1999 until 11 February 2000, and then from 12 February 2000 until 1 December 2000, which together amount to about twenty months. The Court notes that the Government have not given any explanation for these delays in the proceedings and that the delays are entirely attributable to the domestic authorities.

62. Finally, the Court recalls that what was at stake for the applicant, *inter alia*, was his freedom of movement as guaranteed by Article 2 § 2 of Protocol No. 4 to the Convention (see §§ 63-82 below). The Court considers that the proceedings which may involve such issues require examination without unnecessary delays. However, in the circumstances of the present

case the Court does not find that the national court displayed the diligence required. Having regard to this, to the periods of inactivity and to the fact that the case did not involve any complexity, the Court finds that the length of proceedings in the present case exceeded what may be considered “reasonable” within the meaning of Article 6 § 1 of the Convention. There has, accordingly, been a breach of this provision.

II. ALLEGED VIOLATION OF ARTICLE 2 § 2 OF PROTOCOL NO. 4 TO THE CONVENTION

63. The applicant complained further that his freedom of movement was restricted, contrary to Article 2 § 2 of Protocol No. 4, which reads as follows:

“1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.”

A. Submissions of the parties

64. The Government submitted that the applicant's passport had never been seized, but that he had left it at the border checkpoint when he had refused to pay an “on the spot” fine and had demonstratively driven away. Furthermore, his passport had been kept by the authorities for more than two years only because the applicant did not reside at his registered address which again had prevented the authorities from returning the passport to him.

65. Even assuming that the applicant's passport had been seized by a customs officer, such an act was, in the Government's view, in accordance with law because Sections 34 and 35 of the Act on Travel Documents allows for the seizure of the passport where, as in this case, a person acted against the laws regulating customs of foreign trade. Furthermore, the Government maintained that any possible interference with the applicant's right to freedom of movement was in the circumstances necessary in a democratic society for the protection of public order and the rights of others.

66. The applicant maintained that his passport had been seized by a customs officer without reason. He argued that no decision had been issued justifying the seizure of his passport.

67. He contested the Government's contention that his address was unknown and claimed that already in his letter of 10 February 1999 sent to the Customs Administration he had informed the authorities of his address. To support this claim the applicant stated that he had received the Customs Administration's reply of 22 February 1999 at his place of residence in Karlovac.

B. The Court's assessment

I. Principles established by Article 2 of protocol No. 4 to the Convention and the case law of the Convention institutions

68. The Court reiterates that the right of freedom of movement as guaranteed by paragraphs 1 and 2 of Article 2 of Protocol No. 4 is intended to secure to any person a right to liberty of movement within a territory and to leave that territory, which implies a right to leave for such country of the person's choice to which he may be admitted (see, *mutatis mutandis*, *Peltonen v. Finland*, Commission decision of 20 February 1995, Decisions and Reports (DR) 80-A, p. 43, § 31 and *Baumann v. France*, judgment of 22 May 2001, *Reports of Judgments and Decisions 2001-V*, p. 217, § 61). It follows that liberty of movement prohibits any measure liable to infringe that right or to restrict the exercise thereof which does not satisfy the requirement of a measure which can be considered as “necessary in a democratic society” in the pursuit of the legitimate aims referred to in the third paragraph of the above-mentioned Article.

69. Accordingly, the Court considers that a measure by means of which an individual is dispossessed of an identity document such as, for example, a passport, undoubtedly amounts to an interference with the exercise of liberty of movement (see, *mutatis mutandis*, *M. v. Germany*, application no. 10307/83, Commission decision of 6 March 1984, DR 37, p. 113 and *Baumann v. France*, cited above, p. 217, § 62).

70. In the instant case, the Court notes that on 6 February 1999 the applicant's passport was taken by a customs officer because the applicant refused to pay a fine. A few days after the incident, on 10 February 1999, the applicant wrote a letter to the Customs Administration asking them to return his passport. He received a reply to his address in Karlovac stating that his passport was seized by a customs officer because the applicant refused to pay the fine for a customs offence. It was also stated that the seizure of the applicant's passport was in accordance with the law. Thus, the authorities admitted that the passport was seized. Therefore, the

Government's assertion that the applicant's passport was not seized cannot be accepted.

71. The Customs Administration which was in possession of the applicant's passport, did not return it to the applicant. Instead, already on 12 February 1999 they forwarded the passport to the Slunj Police Department. The reason for not returning the passport directly to the applicant remains unclear since no proceedings were ever instituted against the applicant for any customs offence.

72. The Court notes further that, even accepting the Government's argument that the applicant's address was unknown, the Zagreb Police Department kept the applicant's passport for more than two years before it sent it to the Karlovac Police Department.

73. The Court finds that as a result of the seizure of the applicant's passport he could not, at the very least from the date of his application for its return on 10 February 1999, retrieve it. Accordingly, it observes that he was denied the use of that identity document, which, had he wished, would have permitted him to leave the country. It therefore finds that the applicant's right to liberty of movement was restricted in a manner amounting to an interference within the meaning of Article 2 of Protocol No. 4 to the Convention (see, *mutatis mutandis*, *Guzzardi v. Italy*, judgment of 6 November 1980, Series A no. 39, p. 33, § 92; *Raimondo v. Italy*, judgment of 22 February 1994, Series A no. 281-1, p. 19, § 39; and *Labita v. Italy* [GC], *Reports 2000-IV*, pp. 38 to 39, § 193 and *Baumann v. France*, cited above, p. 217, § 63 and *a contrario*, *Piermont v. France*, judgment of 27 April 1995, Series A no. 314, p. 20, § 44).

74. It remains to be determined whether that restriction was “in accordance with the law” and was a “necessary measure in a democratic society”.

2. Requirement of a measure “in accordance with the law”

75. The Government argued that the seizure of the applicant's passport was in accordance with law, namely Section 34 and 35 of the Act on Travel Documents.

76. The applicant did not address this issue.

77. Having regard to the conclusion reached (see § 82 below) the Court does not find it necessary to examine the question.

3. Necessity of the measure “in a democratic society” in the pursuit of legitimate aims

78. The Court must examine the question whether the seizure and keeping of the passport could be considered a measure which was “necessary in a democratic society” within the meaning of the third paragraph.

79. The Court notes firstly that although the applicant had refused to pay the fine imposed, no proceedings were ever instituted against him for any customs offence that he had allegedly committed. By not pursuing their initial motivation for the seizure of the applicant's passport the authorities lost any further ground for keeping the passport. Therefore, the applicant was unable to ascertain the grounds justifying the continuing deprivation of his passport.

80. The Court also notes that although the Police showed initiative in order to return the passport, the Zagreb Municipal Court rejected the applicant's request for an interim measure that the passport be returned to him. Thus, it appears that there was no co-operation or co-ordination both within the police and between the police and the judicial authorities. This lack of appropriate administrative procedures resulted, *inter alia*, in the applicant being unable to travel abroad for a prolonged period of time.

81. Having regard to the development of the case and the outcome of the civil proceedings for the return of the passport, the Court notes that the applicant was never charged with any customs offence and that this aspect of the civil proceedings ended when the police returned the passport. In that connection, the Court does not find any justification for the Customs Administration's refusal to return the applicant's passport or for the Zagreb Municipal Court's rejection of the applicant's request for the interim measure, which both resulted in the continuing seizure of the applicant's passport and the continuing interference with his right to liberty of movement.

82. Having regard to the above, the Court finds that the interference with the applicants liberty of movement was not a measure "necessary in a democratic society" proportionate to the aims pursued (see, *Labita v. Italy*, cited above, p. 147, § 197 and *Baumann v. France*, cited above, p. 219, § 67).

Accordingly, there has been a violation of Article 2 of Protocol No. 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. 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

84. The applicant sought 20,000 euros in respect of pecuniary and non-pecuniary damage. He did not further specify his claim.

85. The Government asked the Court to assess the amount of just satisfaction to be awarded on the basis of its case-law.

86. The Court notes that the ground for awarding just satisfaction is that the applicant did not have a hearing within a reasonable time within the meaning of Article 6 § 1. The Court considers that the applicant must have sustained some non-pecuniary damage both as a result of the excessive length of proceedings and as a result of the breach of Article 2 of Protocol No. 4, which are not sufficiently compensated by a mere finding of a breach. Having regard to the facts of the case and ruling on an equitable basis, as required by Article 41 of the Convention, the Court decides to award the applicant 2,000 euros in respect of non-pecuniary damage and rejects the remainder of the claims made.

B. Costs and expenses

87. The applicant made no separate claim in respect of the costs and expenses. Accordingly, the Court does not award any sum in this respect.

C. Default interest

88. The Court considers it appropriate that the default interest 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. *Holds* that Article 6 § 1 of the Convention is applicable to the proceedings before the Zagreb Municipal Court and the Zagreb County Court;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 2 § 2 of Protocol No. 4;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention EUR 2,000 (two thousand euros) in respect of non-pecuniary damage which should be converted into the national currency of the respondent State at the rate applicable at the date of settlement together with any tax that may be chargeable on the above amount;

(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;

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

Done in English, and notified in writing on 13 November 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President