



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

FOURTH SECTION

CASE OF KANGASLUOMA v. FINLAND

(Application no. 48339/99)

JUDGMENT

STRASBOURG

20 January 2004

FINAL

14/06/2004

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 Kangasluoma v. Finland,

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mrs V. STRÁŽNICKÁ,

Mr M. FISCHBACH,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr S. PAVLOVSKI, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 16 December 2003,

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

PROCEDURE

1. The case originated in an application (no. 48339/99) against the Republic of Finland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Finnish national, Mr Matti Kangasluoma ("the applicant"), on 20 October 1998.

2. The Finnish Government ("the Government") were represented by their Agent, Mr Arto Kosonen, Director, Ministry for Foreign Affairs.

3. The applicant alleged, in particular, about the excessive length of the criminal proceedings against him.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. 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.

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

7. By a decision of 21 May 2002, the Court declared the application partly admissible and decided that no hearing on the merits was required (Rule 59 § 3 *in fine*).

8. The Government, but not the applicant, filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1949 and lives in Lapua.

10. The applicant was a managing director in company X until it went into liquidation, on 8 May 1990, before the District Court (*kihlakunnanoikeus, häradsrätt*) of Isokyrö. The creditor withdrew the application later and the liquidation proceedings were terminated on 28 May 1990, only to be restarted on 15 August 1990.

11. In December 1990 the police started interrogating the applicant relating to the business activities and accounts of X. In 1991 the Central Criminal Police (*keskusrikospoliisi, centralkriminalpolisen*) conducted several searches of the applicant's and X's premises in Seinäjoki, Isokyrö and Nurmo. The police reports, resulting from the investigations, were dated 30 May 1991, 26 April 1993 and 7 July 1993. In respect of the third report the police carried out a further investigation which was terminated on 25 July 1994. The applicant was not taken into police custody during the criminal investigations or the subsequent criminal proceedings against him.

12. On 15 June 1994 the applicant was charged on eleven counts with offences, including, *inter alia*, aggravated tax fraud. The District Court held oral hearings on 7 September 1994, 8 December 1994, 22 February 1995, 20 April 1995 and 31 August 1995. The hearing was each time adjourned on the Prosecutor's request. On 31 August 1995, the District Court convicted the applicant as charged and sentenced him to two years' imprisonment. Two other persons were also accused and convicted of one offence each.

13. All the accused appealed to the Court of Appeal (*hovioikeus, hovrätt*) of Vaasa which, by a decision of 25 January 1996, referred the case back to the District Court for reconsideration, on the grounds that the District Court's judgment had been inadequately reasoned.

14. The case was reconsidered by the District Court (*käräjäoikeus, tingsrätt*) of Kyrönmaa, which had replaced the District Court of Isokyrö. On 14 November 1996, the District Court convicted the applicant on ten counts and sentenced him to one year and ten months' imprisonment.

15. In addition to the applicant, the prosecutor and the Tax Administration of Western Finland (*Länsi-Suomen verovirasto, Västra Finlands skatteverk*), which was also a party to the proceedings, appealed to the Court of Appeal. On 2 February 1998 the Court of Appeal granted the applicant a partly cost-free trial as from 1 June 1996 onwards.

On 11 February 1998 the Court of Appeal acquitted the applicant of one of the charges and rejected the rest of the applicant's appeal, upholding the prison sentence. The applicant was also obliged to pay the State of Finland a

total of 3,460,000 Finnish Marks (equivalent to approximately EUR 582,000) with interest in compensation for unpaid taxes.

16. On 24 April 1998, the Supreme Court (*korkein oikeus, högsta domstolen*) refused the applicant leave to appeal.

17. The applicant twice requested the reopening of the proceedings before the Supreme Court. The Supreme Court rejected the applicant's requests on 25 August and 24 November 1998, respectively.

18. On 21 September 1998, the applicant complained to the Chancellor of Justice (*oikeuskansleri, justitiekansler*) about the delay in the proceedings, amongst other things. The Deputy Chancellor of Justice found, in his decision of 30 October 2000, that the length of the proceedings could not be regarded as excessive, taking into account the fact that the criminal investigation lasted about two years and a half, the prosecutor's decision whether to prosecute or not took about a year, the District Court's first judgment was issued in about one year, the Court of Appeal's decision to refer the case back to the District Court was made in a few months, the District Court's second judgment was issued in less than ten months, the Court of Appeal re-examined the District Court's judgment in about a year and three months, and the Supreme Court refused the applicant leave to appeal in about two months. Thus, the court proceedings, including five different court decisions, lasted less than four years all together. Even though the proceedings were lengthy, it had to be noted that the case was complex and that it had proceeded at all times without any unnecessary delay at any stage. He emphasised that it was in the interests of the applicant that the criminal investigation was also carried out in a profound and appropriate manner. As the applicant's application was still pending before the Strasbourg Court, the Deputy Chancellor of Justice found it unnecessary to take any measures in the case.

II. RELEVANT DOMESTIC LAW

19. According to Chapter 16, Section 4, subsection 2, of the Code of Judicial Procedure (*oikeudenkäymiskaari, rättegångsbalken*), as in force at the relevant time, a District Court was allowed to adjourn a hearing of a criminal case upon request by a party to the proceedings. Any party who considered that the case had unjustifiably been delayed by an adjournment, had the right to lodge a complaint with a Court of Appeal within 30 days from the date of the adjournment. The law was amended as from 1 October 1997, prohibiting adjournment as a general rule.

20. Under section 118, subsection 3 of the Constitution of Finland (*perustuslaki, grundlag*; 731/1999), everyone who has suffered a violation of his or her rights or sustained loss through an unlawful act or omission by a civil servant or other person performing a public task must have the right to request that the civil servant or other person in charge of a public task be

sentenced to a punishment and that the public organisation, official or other person in charge of a public task be held liable for damages, as provided in more detail by legislation.

21. According to Chapter 3, section 2, subsection 1 of the Tort Liability Act (*vahingonkorvauslaki, skadeståndslag*; 412/1974), a public corporation is vicariously liable in damages for injury or damage caused through an error or negligence in the exercise of public authority. However, according to subsection 2, the liability of the corporation referred to in subsection 1 arises only if the performance of the activity or task, having regard to its nature and purpose, has not met the reasonable requirements set for it.

The Government observed that the examination of a criminal case in a court of law is considered to be the “performance of a public task”, and any state liability is based on the above provision of the Tort Liability Act. In the event that the measure cannot be considered to be the performance of a public task, the provisions of section 1 of Chapter 3 apply to the liability of the state to pay damages. According to section 1, an employer is vicariously liable in damages for injury or damage caused by an employee through an error or negligence at work. These provisions apply correspondingly to the state where the injury or damage has arisen through an error or negligence on the part of an employee.

22. Furthermore, according to Chapter 5, section 1 of the Tort Liability Act, damages shall be awarded in compensation for personal injury and damage to property. Where the injury or damage has been caused by an act punishable by law or in the exercise of public authority, or in other cases, where there are especially weighty reasons for the same, damages shall also be awarded in compensation for economic loss that is not connected to personal injury or damage to property.

THE LAW

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

23. The applicant complained under Article 6 § 1 of the Convention that the length of criminal proceedings against him exceeded a reasonable time. Article 6 § 1 reads, in so far as relevant, as follows:

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

A. Period to be taken into account

24. The applicant's complaint relates to the length of proceedings, which began in December 1990 when the applicant was interrogated by the police and when the criminal investigation against him was commenced. The applicant emphasised that the criminal investigation against him had already commenced in December 1990 and that he had been affected by the negative influence of the case ever since, as it had soon become public knowledge in his home town, causing serious difficulties to his business. The proceedings ended on 24 April 1998 with the Supreme Court's decision not to grant the applicant leave to appeal. He submitted that the proceedings to be taken into account had therefore lasted seven years and four months.

25. According to the Government the proceedings at issue began on 15 June 1994 when the applicant was formally charged with criminal offences. The proceedings to be taken into account lasted only three years ten months and nine days.

In the Government's view, the length of the pre-trial investigation should not be taken into account in the assessment of the length of the proceedings. The Government recalled in this respect that the ongoing police investigation did not restrict the applicant's liberty in any way; at no stage of the pre-trial investigation was he under arrest or detention, nor did any other inconvenience result for him from the pre-trial investigation.

26. The Court recalls that the period to be taken into account in the assessment of the length of the proceedings starts from an official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence or some from other act which carries the implication of such an allegation and which likewise substantially affects the situation of the suspect (see *Corigliano v. Italy*, judgment of 10 December 1982, Series A no. A-57, § 34). According to the Court's constant case-law, a person has been found to be subject to a "charge", *inter alia*, when a preliminary investigation has been opened in his case and, although not under arrest, the applicant has officially learned of the investigation or has begun to be affected by it. In the present case the Court finds that the applicant officially learned of the investigation at the time when he was interrogated by police for the first time, in December 1990.

27. There was no dispute over when the proceedings ended; it was common ground that the relevant date was 24 April 1998 when the Supreme Court's decision was issued.

28. Consequently, the Court finds that the proceedings lasted for approximately seven years and four months.

B. Reasonableness of the length of the period in issue

29. The Court will assess the reasonableness of the length of the proceedings in the light of the particular circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. On the latter point, what is at stake for the applicant has also to be taken into account (see, among many other authorities, the *Philis v. Greece* (no. 2) judgment of 27 June 1997, *Reports* 1997-IV, § 35, and the *Portington v. Greece* judgment of 23 September 1998, *Reports* 1998-VI, § 21.)

30. The applicant emphasised that the time taken in particular by the police and the Prosecutor exceeded what was reasonable, as the charges against the applicant were brought in 1994, even though, according to his knowledge, the main part of the investigation reports had already been completed by the spring of 1991. By the time when he was finally charged with a criminal offence he was already under the impression that the police investigation would not result in any criminal proceedings against him. Therefore he had not found it necessary to request the police or the prosecutor to speed up their decision-making. However, during the court proceedings he repeatedly requested the courts to make their decisions without undue delay or, alternatively, to dismiss the charges in the event that they found it difficult to continue on the basis of the allegations submitted by the prosecutor.

31. The applicant also recalled that the case had to be reheard before the District Court as that court's first decision of 31 August 1995 lacked sufficient reasoning and was, thus, referred back to the District Court by the Court of Appeal. The lack of reasoning was clearly a fault on the part of the relevant authorities, causing an unnecessary delay of one year, two months and fourteen days.

32. The Government disagreed and argued that the case was complex on account of the volume of evidence and the number of charges against the applicant and his two co-accused.

In respect of the pre-trial investigation the Government noted that the investigation concerned a complex case of economic crime, the investigation of which demanded considerable time and effort. In this respect it should be noted that, *inter alia*, the judgments by the District Court and the Court of Appeal indicate that the applicant committed the criminal acts systematically over a long period of time, with a view to obtaining large financial benefits. The investigation files consisted of a large number of documents with numerical data. The applicant himself did not request the authorities to act more expeditiously during the investigation of the case. The pre-trial investigation, from the first request for investigation until the completion of the investigation, lasted approximately two and half

years. Considering the extensive and complex nature of the case, the length of the pre-trial investigation was reasonable in the Government's view.

In respect of the actual court proceedings the Government emphasised that there were three accused and five complainants in the proceedings. The charges against the applicant consisted of eleven indictments concerning accounting offences, aggravated tax fraud, aggravated fraud, dishonesty by a debtor, aggravated fraud by a debtor and embezzlement. The Court of Appeal files included 3,065 pages of documentary evidence. It was thus obvious that the proceedings were time-consuming.

33. In respect of the applicant's argument that the case was once referred back to the District Court because the first District Court decision was so inadequately reasoned that it could not be approved by the Court of Appeal, causing a long unnecessary delay in the proceedings, the Government admitted that it was necessary for the Court of Appeal to refer the case back to the District Court on 25 January 1996. However, the resulting delay was insignificant. The judgment of the District Court which was quashed by the Court of Appeal was originally given on 31 August 1995. After reconsideration of the case, the District Court issued a new judgment on 14 November 1996. Thus, the new judgment was given one year and two and a half months after the first one.

34. Considering that the proceedings in all three court instances, including the time required for the reconsideration of the District Court judgment, lasted in total less than three years and eleven months, the length of the proceedings was reasonable. The Government recalled that, due to the period of time between the applicant's offence and the date of issue of the judgment, it had been possible to apply new legislative provisions in favour of the applicant, as in respect of some of the offences the material legal provisions had been amended so as to be more lenient than those in force at the time of commission of the offence. In particular, the material provisions of the Penal Code in respect of aggravated fraud by a debtor, aggravated tax fraud and embezzlement had been amended as from 1 January 1991 so as to make them more lenient. In accordance with the principle that, in the event of a change in the law applicable to a given case prior to a final judgment, the law more favourable to the person to be convicted shall apply, the present applicant was convicted under those provisions in force at the date of the judgment.

35. The Court considers that, even though the case was of some complexity, it cannot be said that this in itself justified the entire length of the proceedings.

In this connection the Court notes that the pre-trial investigation started in December 1990 and the charges were brought against the applicant on 15 June 1994, i.e. three and a half years later. The District Court proceedings started on 15 June 1994 and were terminated by that court's decision of 14 November 1996, i.e. two years and five months later. The

Court of Appeal's decision was given on 2 February 1998, which is one year, two months and nineteen days after the District Court's decision was issued. It took the Supreme Court two months and twenty-two days to refuse the applicant leave to appeal by its decision of 24 April 1998.

The Court considers that the pre-trial investigation and the District Court proceedings were excessive in length. The lack of progress in these proceedings caused a delay for which the Court does not find a sufficient justification and which it considers incompatible with the diligence required under Article 6 § 1.

36. Accordingly, the Court cannot regard the period time that elapsed in the instant case as reasonable.

There has therefore been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

37. The applicant also submitted that he did not have an effective remedy in respect of the excessive length of the proceedings within the meaning of Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

38. In the present case the Court decided in its admissibility decision of 21 May 2002 to join the question of the existence of effective remedies to its consideration of the merits of the case. Therefore, it has to determine the scope of the Contracting States' obligation under Article 13 to provide a person with “an effective remedy before a national authority” if the Convention right asserted by the applicant is the right to a “hearing within a reasonable time” guaranteed by Article 6 § 1.

39. The applicant argued that he did not have an effective remedy in respect of the length of the criminal investigations pending against him (since 1990 until 1994) as he could not even consider the possibility of being charged with an offence. Later, during the criminal proceedings against him, he repeatedly reminded the domestic courts about the length of the proceedings and requested that the proceedings be expedited. Moreover, the case was once referred back to the District Court because the first District Court decision was so inadequately reasoned that it could not be approved even by the Court of Appeal, causing a long unnecessary delay which he could not challenge in any way.

40. In respect of the police investigations the Government argued that the applicant had an effective remedy before a national authority as he could have lodged a complaint with the superior police authorities and, in respect of the delay in the consideration of the charges, with a superior prosecutor, but that he had failed to do so.

41. In respect of the court proceedings the Government recalled that, under Chapter 16, Section 4, subsection 2 of the Code of Judicial Procedure, in force at the relevant time, any party who considered that the case had unjustifiably been delayed by adjournment, had the right to lodge a complaint with the Court of Appeal within thirty days from the date of the adjournment. The applicant did not use that remedy. As the applicant had not even claimed that the Court of Appeal or the Supreme Court proceedings exceeded a “reasonable time”, the applicant had been provided with an effective remedy before a national authority. The Government also recalled that the applicant could, and did, complain about the length of the proceedings to the Chancellor of Justice. In his decision of 30 October 2000, the Deputy Chancellor of Justice found that no unnecessary delay had taken place. According to him, a profound and careful investigation and consideration of the case were necessary in order to ensure the legal safeguards for the parties to the proceedings. It should also be noted that the Parliamentary Ombudsman or the Chancellor of Justice may, as necessary, draw the court’s attention to delay in the proceedings.

In addition to the remedies referred to above, the most usual and a generally efficient means of accelerating proceedings is to submit a reasoned request for this purpose to the court considering the case.

42. The Government also argued that the applicant had not reminded the domestic courts about the length of the proceedings nor requested that the proceedings be expedited even though he claimed before the Court that he had. At least there was no indication in the appeal documents that the applicant was dissatisfied with the length of the proceedings. Only in his observations given in relation to the appeal of the prosecutor and tax authorities to the Court of Appeal, had the applicant invoked the length of the proceedings as a ground for his request for conversion of his sentence of imprisonment into a conditional one.

43. As to the applicant’s entitlement to compensation on the alleged ground that his case was not heard within a reasonable time, the Government observed that, in the event that the delay in court proceedings had been caused by an erroneous or negligent act of a public official, and that the act had resulted in damage that was capable of being compensated under the Tort Liability Act, the injured party was entitled to compensation. However, a mere delay was not as such a ground for compensation (that is, where no erroneous or negligent act had been committed and where the delay had not resulted in any damage).

44. The Government emphasised that a delay in proceedings may be taken into account as a factor reducing the sentence under Chapter 6, section 4 of the Penal Code. This could have been done in the present applicant’s case, had there been a reason to do so. However, considering

that the length of the proceedings was reasonable, there was no reason to reduce the sentence on account of the length of the proceedings.

45. The Government also recalled that Article 13 of the Convention requires an effective remedy that offers reasonable prospects of success. Although no single remedy may itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see e.g. the *X. v United Kingdom* judgment of 5 November 1981, Series A no. 46, p. 26, § 60; the *van Droogenbroeck v. the Netherlands* judgment of 24 June 1982, Series A no. 50, p. 32, § 56; and the *Leander v. Sweden* judgment of 26 March 1987, Series A no. 116, §§ 77 and 81-82).

46. As the Court has held on many occasions, Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief. The scope of the Contracting States’ obligations under Article 13 varies depending on the nature of the applicant’s complaint; however, the remedy required by Article 13 must be “effective” in practice as well as in law (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

47. It remains for the Court to determine whether the means available to the applicant in Finnish law for raising a complaint about the length of proceedings in his case would have been “effective” in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that had already occurred.

48. The Court notes that the Government have failed to show how the applicant could obtain relief – either preventive or compensatory – by having recourse to the above-mentioned remedies (see paragraphs 19-22 above). On the contrary the Government admitted that a mere delay was not as such a ground for compensation under Finnish law (see § 43 above). Nor did the Government supply any example from domestic practice showing that, by using the means in question, it was possible for the applicant to obtain such relief.

This is in itself sufficient to demonstrate that the remedies referred to do not meet the standard of “effectiveness” for the purposes of Article 13 because, as the Court has already said (see paragraph 46 above), the required remedy must be effective both in law and in practice.

49. Accordingly, there has been a violation of Article 13 of the Convention in that the applicant had no domestic remedy whereby he could enforce his right to a hearing within a reasonable time as guaranteed by Article 6 § 1 of the Convention.

III 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. Under the head of pecuniary damage, the applicant claimed a sum of EUR 2,000,000, with 11 per cent interest, for loss of his salary from his professional activities for the period of twenty years, caused by his lengthy detention, as he could not take up his professional activities after having served a prison sentence.

Under the head of non-pecuniary damage the applicant asked the Court to award him EUR 261,000, for moral suffering and distress of his own and that of his family resulting from a violation of his Convention rights.

52. The Government noted that there was no causal link between the facts of the alleged violation of Article 6 § 1 of the Convention and any pecuniary damage. In this respect the Government recalled that the present case before the Court concerned the length of the proceedings under Article 6 § 1 of the Convention and not the substance of the dispute before the Finnish courts. They also noted that the applicant’s claim for interest did not have any legal or other ground, and that the sums claimed were without any reasonable magnitude.

The Government considered that the applicant should be awarded non-pecuniary compensation should the Court find a violation of Article 6 § 1 of the Convention. However, the Government found the sum claimed by the applicant far too excessive. In the Government’s view, the amount to be awarded should not exceed EUR 1,000. At any rate, the Government left the assessment of the final amount to the Court’s discretion, to be made on an equitable basis.

53. The Court finds that there is no causal link between the violation found and the alleged pecuniary damage. Consequently, there is no justification for making any award to him under that head.

54. On the other hand, the Court accepts that the applicant has certainly suffered non-pecuniary damage – such as distress and frustration resulting from the excessive length of the proceedings – which is not sufficiently compensated by the findings of violation of the Convention. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,000 under this head.

B. Costs and expenses

55. The applicant, who was not legally represented during the proceedings before the Court in Strasbourg, sought reimbursement of EUR 30,000 for costs and expenses incurred in the proceedings before the Court.

56. In their memorial the Government invited the Court to make an award, if any, only in so far as the costs and expenses claimed were actually and necessarily incurred and were reasonable as to quantum. The Government observed that applicant had not submitted any documents in support of his claims. In any event, the amount claimed was far too excessive. The Government considered that the total amount of compensation for costs and expenses should not surpass EUR 350. The Government left it to the Court's discretion to decide on the final amount of costs and expenses.

57. Taking into account the circumstances of the case, the Court considers it reasonable to award the applicant EUR 400 for his costs and expenses.

C. Default interest

58. 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

1. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* unanimously that there has been a violation of Article 13 of the Convention
3. *Holds* unanimously
 - (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, the following amounts:
 - (i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 400 (four hundred euros) 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* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 January 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President