



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

FIRST SECTION

CASE OF SEJDOVIC v. ITALY

(Application no. 56581/00)

JUDGMENT

STRASBOURG

10 November 2004

**THIS CASE WAS REFERRED TO THE GRAND CHAMBER,
WHICH DELIVERED JUDGMENT IN THE CASE ON
1 March 2006**

This judgment is final but it may be subject to editorial revision.

In the case of SejdoVIC v. Italy,

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

Mr C.L. ROZAKIS, *President*,

Mr P. LORENZEN,

Mr G. BONELLO,

Mr A. KOVLER,

Mr V. ZAGREBELSKY,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 11 September 2003 and on 21 October 2004,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 56581/99) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a national of former Yugoslavia, Mr Ismet SejdoVIC (“the applicant”), on 22 March 2000.

2. The applicant was represented by Mr B. Bartholdy, a lawyer practising in Hamburg. The Italian Government (“the Government”) were represented by their Agent, Mr I.M. Braguglia, and their co-Agent, Mr F. Crisafulli.

3. The applicant complained, in particular, that he had been convicted *in absentia* without having had the opportunity to present his defence before the Italian courts, in breach of Article 6 of the Convention.

4. The application was allocated to the First 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. In a decision of 11 September 2003 the Chamber declared the application partly admissible.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1972 and lives in Hamburg (Germany).

8. On 8 September 1992 a Mr S. was fatally injured by a shot fired at a Gypsy encampment in Rome. The initial statements taken by the police from witnesses indicated that the applicant had been responsible for the killing.

9. On 15 October 1992 the Rome investigating judge made an order for the applicant's detention pending trial. However, the order could not be enforced as the applicant had become untraceable. As a result, the Italian authorities considered that he had deliberately evaded justice and on 14 November 1992 declared him to be a "fugitive" (*latitante*). The applicant was identified as Cloce (or Kroce) Sejdovic (or Sajdovic), probably born in Titograd on 5 August 1972, the son of Jusuf Sejdovic (or Sajdovic) and the brother of Zaim (ou Zain) Sejdovic (or Sajdovic).

10. As the Italian authorities had not managed to contact the applicant to invite him to select his own defence counsel, they assigned him a lawyer, who was informed that his client and four other persons had been committed for trial on a specified date in the Rome Assize Court.

11. The lawyer attended the hearing, but the applicant did not.

12. In a judgment of 2 July 1996, the text of which was deposited with the registry on 30 September 1996, the Rome Assize Court convicted the applicant of manslaughter and illegally carrying a weapon and sentenced him to twenty-one years and eight months' imprisonment. One of the applicant's co-defendants was sentenced to fifteen years and eight months' imprisonment for the same offences, while the three others were acquitted.

13. The applicant's lawyer was informed that the Assize Court's judgment had been deposited with the registry. He decided not to avail himself of his right of appeal under Italian law. The applicant's conviction accordingly became final on 22 January 1997.

14. On 22 September 1999 the applicant was arrested in Hamburg by the German police under an arrest warrant issued by the Rome public prosecutor's office. On 30 September 1999 the Italian Minister of Justice requested the applicant's extradition. He added that, once he had been extradited to Italy, the applicant would be entitled to apply under Article 175 of the Code of Criminal Procedure ("the CCP") for leave to appeal out of time against the Rome Assize Court's judgment.

15. At the request of the German authorities, the Rome public prosecutor's office stated that it did not appear from the evidence that the applicant had been officially notified of the charges against him. The public prosecutor's office was not in a position to say whether the applicant had

contacted the lawyer assigned to represent him. In any event, the lawyer had attended the hearing and had played an active role in conducting his client's defence, having called a large number of witnesses. Furthermore, the Rome Assize Court had clearly established that the applicant, who had been identified by numerous witness as Mr S.'s killer, was guilty. In the opinion of the public prosecutor's office, the applicant had absconded immediately after Mr S.'s death precisely to avoid being arrested and tried. Lastly, the public prosecutor's office stated:

“A person who is to be extradited may seek leave to appeal against the judgment. However, for a court to agree to re-examine the case it has to be proved that the accused was wrongly deemed to be a 'fugitive'. To sum up, a new trial, even in the form of an appeal (during which new evidence may be submitted), is not granted automatically.”

16. On 6 December 1999 the German authorities refused the Italian Government's extradition request on the ground that the requesting country's domestic legislation did not guarantee with sufficient certainty that the applicant would have the opportunity of having his trial reopened.

17. In the meantime, the applicant had been released on 22 November 1999.

II. RELEVANT DOMESTIC LAW

18. The relevant parts of Article 175 §§ 2 and 3 of the CCP provide:

“A person convicted *in absentia* ... may apply for leave to appeal out of time against the judgment where he is able to prove that he was not effectively notified [of the judgment] ... [and] on condition that there has been no negligence on his part or, if the judgment delivered *in absentia* has been served ... on his lawyer ..., that he has not deliberately refused to apprise himself of the steps taken in the proceedings.

An application for leave to appeal out of time must be lodged within ten days of the date ... on which the accused learned [of the judgment], failing which it shall be inadmissible.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

19. The applicant complained that he had been convicted *in absentia* without having had the opportunity to present his defence before the Italian courts. He relied on Article 6 §§ 1 and 3 of the Convention, the relevant parts of which provide:

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

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

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

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

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.”

A. The parties' submissions

1. The applicant

20. The applicant argued that his right to a fair trial had been infringed in that he had not been informed of the accusations against him. He submitted that the defence conducted by his lawyer could not be regarded as effective and adequate in view of the fact that, among the defendants whom the lawyer had represented, those who had been present had been acquitted and those who had not had been convicted.

2. The Government

21. The Government observed that the applicant's defence in the Rome Assize Court had been adequately and effectively conducted by a lawyer appointed by the authorities with a view to ensuring that the defendant's rights were respected. The same lawyer had represented other defendants in the same proceedings, some of whom had been acquitted, and had discharged his duties actively by calling a number of witnesses.

22. The Government pointed out that notice of the steps taken in the proceedings had been given to the applicant's lawyer because the applicant had deliberately sought to evade justice and had been deemed to be a fugitive. Before designating him thus, the authorities had searched for the applicant at the nomads' camp (*campo nomadi*) where he was said to be living. Furthermore, the Rome Assize Court had carefully established the facts, basing its findings on statements by several eyewitnesses.

23. Noting that no issue arose in the present case as to whether the applicant had been represented, the Government observed that the Court had found a violation of Article 6 of the Convention in cases where a defendant's failure to appear at the trial had been governed by the former Code of Criminal Procedure (they cited *Colozza v. Italy*, judgment of 12 February 1985, Series A no. 89; *T. v. Italy*, judgment of 12 October 1992, Series A no. 245-C; and *F.C.B. v. Italy*, judgment of 28 August 1991, Series A no. 208-B). The new procedural rules introduced subsequently and the special circumstances of Mr Sejdic's case set it apart, in their submission, from those cases, in which there had been cause to doubt that the applicants had deliberately sought to evade justice, or that they had had the opportunity to participate in the trial, or that the authorities had been negligent in ascertaining the accused's whereabouts.

24. The Government explained that under the former system an untraceable accused had been deemed to be a fugitive, and if notice had been served in due form there had been no possibility of extending the time allowed for appealing. Under the system introduced by the new Code of Criminal Procedure, however, the authorities had to conduct thorough searches for the accused at every stage of the proceedings, and an appeal could be lodged out of time even where there had been no irregularities in notification. Moreover, contrary to what the Court had stated in its decision on the admissibility of the application, persons convicted *in absentia* were not required to prove that they had not deliberately refused to apprise themselves of the steps taken in the proceedings, but could simply show that they had not been aware of them. It was for the court to assess in turn whether the convicted person's ignorance had been wilful.

25. In the light of the foregoing, the Government considered that Italian law had provided the applicant with a genuine chance of appearing at a new trial, that possibility being ruled out only where the convicted person's absence had been intentional – in other words, where the person appeared to have deliberately waived the right to appear. Such a waiver could be implicit, resulting for example from conduct incompatible with the intention of exercising procedural rights and the right to appear as enshrined in domestic legislation. The Government referred in that connection to the *Medenica v. Switzerland* judgment (no. 20491/92, ECHR 2001-VI), in which they claimed that Court had laid down the principle that absconding amounted to a waiver of the right to appear at the hearing.

26. It was true that, unlike Mr Medenica, Mr Sejdic had never been officially informed of the proceedings against him. However, that factor should not be given too much importance; otherwise, compliance with the Convention would depend on the speed and efficiency with which the accused managed to abscond. In the Government's submission, the mere absence of official notification did not in itself constitute sufficient proof that an applicant had acted in good faith; further evidence of negligence on

the part of the authorities was required. It would, moreover, be manifestly incompatible with the effectiveness of the criminal-justice system and with the Court's case-law to consider that even a person who had consciously evaded justice had not waived his right to appear in court and should be granted a new trial. If that were the case, the accused would have sole power to review the validity of their own trial, and the guilty would be in a more favourable position than the innocent.

27. In the instant case, the applicant had been in a perilous position and it had clearly been in his interests not to appear at the trial (or, more precisely, to avoid the prison sentence he would have received). The applicant had not advanced any plausible reason as to why, immediately after a killing for which he had been responsible according to eyewitnesses, he had suddenly moved from his usual place of residence without leaving an address or the slightest trace of his whereabouts. Furthermore, before being arrested by the German police, he had never come forward and had never sought a retrial. In the Government's opinion, the applicant had in fact intended to abscond.

28. Lastly, the Government pointed out that, in accordance with the Court's case-law, the "crucial" importance of defending an accused person should prevail over the "capital" importance of his appearing at the trial (here, they cited *Lala v. the Netherlands* and *Pelladoah v. the Netherlands*, judgments of 22 September 1994, Series A nos. 297-A and 297-B). The active presence of a defence lawyer, of which the applicant had had the benefit in the present case, was therefore sufficient to restore the balance between the State's legitimate reaction to a defendant's unjustified absence and respect for the rights set forth in Article 6 of the Convention. Furthermore, the Italian legislature, in making a choice that was not open to criticism under the Convention, had decided to attach particular importance to the "technical" defence conducted by a lawyer, whose role was clearly essential in view of the complexity of modern legal systems.

B. The Court's assessment

29. The Court reiterates that, although this is not expressly mentioned in paragraph 1 of Article 6, the object and purpose of the Article taken as a whole show that a person "charged with a criminal offence" is entitled to take part in the hearing. Moreover, sub-paragraphs (c), (d) and (e) of paragraph 3 guarantee to "everyone charged with a criminal offence" the right "to defend himself in person", "to examine or have examined witnesses" and "to have the free assistance of an interpreter if he cannot understand or speak the language used in court", and it is difficult to see how he could exercise these rights without being present (see *Colozza*, cited above, p. 14, § 27; *T. v. Italy*, cited above, p. 41, § 26; *F.C.B. v. Italy*, cited

above, p. 21, § 33; and *Belziuk v. Poland*, judgment of 25 March 1998, *Reports of Judgments and Decisions* 1998-II, p. 570, § 37).

30. Although proceedings that take place in the accused's absence are not of themselves incompatible with Article 6 of the Convention, a denial of justice nevertheless undoubtedly occurs where a person convicted *in absentia* is unable subsequently to obtain from a court which has heard him in accordance with the requirements of Article 6 a fresh determination of the merits of the charge, in respect of both law and fact, where it has not been established that he has waived his right to appear and to defend himself (see *Colozza*, cited above, p. 15, § 29, and *Einhorn v. France* (dec.), no. 71555/01, § 33, ECHR 2001-XI).

31. The Convention allows the Contracting States considerable discretion as regards the choice of the means calculated to ensure that their legal systems are in compliance with the requirements of Article 6, while at the same time preserving their effectiveness. The Court's task, however, is to determine whether the result called for by the Convention has been achieved. In particular, the resources available under domestic law must be shown to be effective where a person charged with a criminal offence has neither waived his right to appear and to defend himself nor sought to escape trial (see *Medenica*, cited above, § 55).

32. In the present case the Italian authorities considered, in substance, that the applicant had waived his right to appear at the trial because he had become untraceable immediately after the killing of Mr S., which had taken place in the presence of several eyewitnesses (see paragraphs 8 and 9 above). That interpretation was supported by the respondent Government, who argued that it could be inferred from the applicant's conduct that he had intended to escape trial.

33. The Court reiterates that neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving of his own free will, either expressly or tacitly, the entitlement to the guarantees of a fair trial; however, any such waiver must be made in an unequivocal manner and must not run counter to any important public interest (see, *mutatis mutandis*, *Kwiatkowska v. Italy* (dec.), no. 52868/99, 30 November 2000, and *Håkansson and Stureson v. Sweden*, judgment of 21 February 1990, Series A no. 171-A, p. 20, § 66).

34. In the instant case, unlike in *Medenica* (cited above, § 59), there is no evidence that the applicant knew of the proceedings against him or of the date of his trial. Only his absence from his usual place of residence when the authorities attempted to arrest him could have given the impression that he was aware or feared that the police were searching for him.

35. The Court considers it unnecessary to speculate as to what caused the applicant to leave his home and travel to Germany. It reiterates that to inform someone of a prosecution brought against him is a legal act of such importance that it must be carried out in accordance with procedural and

substantive requirements capable of guaranteeing the effective exercise of the accused's rights, as is moreover clear from Article 6 § 3 (a) of the Convention. Vague and informal knowledge cannot suffice (see *T. v. Italy*, cited above, p. 42, § 28).

36. Consequently, even supposing that the applicant was indirectly aware that criminal proceedings had been opened against him, it cannot be inferred that he unequivocally waived his right to appear at his trial. It remains to be determined whether the domestic legislation afforded him with sufficient certainty the opportunity of appearing at a new trial.

37. In this connection, the Government referred to the remedy provided for in Article 175 of the CCP, pointing out that in order for a person convicted *in absentia* to apply for leave to appeal out of time, it was sufficient for him to prove that he had not been aware of the steps taken in the proceedings (see paragraph 24 above). The Court observes, however, that in its decision on the admissibility of the application it dismissed an objection by the Government that domestic remedies had not been exhausted, finding that the remedy in question would have had little chance of success and that the applicant would have encountered objective difficulties in using it. The Court sees no reason to revise that conclusion.

38. Moreover, even supposing that, as the Government argued, it is unnecessary for a convicted person wishing to apply for leave to appeal out of time to prove that he had no intention of evading justice, the Court notes that Article 175 of the CCP does not confer on an accused person who has never been effectively informed of his prosecution the unconditional right to an extension of the time allowed for appealing. As the Rome public prosecutor's office itself rightly observed, the applicant was not automatically entitled to a new trial as it was first necessary to ascertain whether he had been wrongly deemed to be a "fugitive" (see paragraph 15 above).

39. The Court reiterates that, in accordance with its case-law cited above (see paragraphs 30 and 31), a person convicted *in absentia* who cannot be deemed to have unequivocally waived his right to appear must in all cases be able to obtain a fresh determination by a court of the merits of the charge. The mere possibility that there might have been a waiver, subject to the submission of evidence by the prosecuting authorities or by the convicted person regarding the circumstances in which he was declared to be a fugitive, cannot satisfy the requirements of Article 6 of the Convention.

40. It follows that the remedy provided for in Article 175 of the CCP did not guarantee with sufficient certainty that the applicant would have the opportunity of appearing at a new trial to present his defence. It has not been argued before the Court that the applicant had any other means of obtaining an extension of the time allowed for appealing, or a new trial.

41. It follows that in the instant case the means provided by the national authorities did not make it possible to achieve the results required by Article 6 of the Convention.

42. There has therefore been a violation of that provision.

II. ARTICLES 46 AND 41 OF THE CONVENTION

A. Article 46 of the Convention

43. Article 46 provides:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.”

44. It is inherent in the Court's findings that the violation of the applicant's right as guaranteed by Article 6 § 1 originated in a problem which results from the Italian legislation on trial *in absentia* and which remains capable of affecting others in future. The unjustified hindrance of the applicant's right to a fresh determination by a court of the merits of the charge against him was not prompted by an isolated incident and is not attributable to the particular turn of events in his case, but was rather the consequence of the wording of provisions of the CCP on the conditions for applying for leave to appeal out of time. Moreover, violations similar to the one in the present case have been found by the Court, either in relation to the former CCP (see *Colozza, T. v. Italy* and *F.C.B. v. Italy*, cited above) or after the entry into force of the new CCP (see *Somogyi v. Italy*, no. 67972/01, ECHR 2004-IV), and it should be noted that the United Nations Human Rights Committee has expressed the view that Italy breached Article 14 of the International Covenant on Civil and Political Rights where a person had been convicted *in absentia* without having been officially and personally informed of the proceedings against him (see the opinion of 27 July 1999 in the case of *Ali Malaki v. Italy*). The Court concludes that the facts of the case disclose the existence, within the Italian legal order, of a shortcoming as a consequence of which anyone convicted *in absentia* who has not been effectively informed of the proceedings against him may be denied a retrial. It also finds that the deficiencies in national law and practice identified in the applicant's particular case may subsequently give rise to numerous well-founded applications.

45. The Court reiterates that, in accordance with Article 46 of the Convention, a finding of a violation imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to select, subject to supervision by the

Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects (see *Broniowski v. Poland* [GC], no. 31443/96, § 192, ECHR 2004-V).

46. It is in principle for the respondent State, subject to monitoring by the Committee of Ministers, to choose the means by which it will discharge its legal obligation under Article 46 of the Convention (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII). The Committee of Ministers' practice has extended the scope of the respondent State's obligations in such matters, requiring, in addition to measures concerning the applicant's individual situation, the adoption of general measures designed to prevent the recurrence of similar violations. In view of the systemic situation which it has identified, the Court would observe that general measures at national level are undoubtedly called for in the execution of the present judgment (see, *mutatis mutandis*, *Broniowski*, cited above, §§ 193-194). The measures must be such as to remedy the systemic defect underlying the Court's finding of a violation, so that persons in a comparable situation to Mr SejdoVIC do not have to suffer a similar breach of their rights under Article 6 of the Convention.

47. The Court considers that the respondent State must remove every legal obstacle that might prevent anyone convicted *in absentia* who, having not been effectively informed of the proceedings against him, has not unequivocally waived the right to appear at his trial from obtaining either an extension of the time allowed for appealing or a new trial, so as to guarantee the right of those concerned to obtain a fresh determination of the merits of the charge against them by a court which has heard them in accordance with the requirements of Article 6 of the Convention. The respondent State must therefore make provision, by means of appropriate regulations, for a new procedure capable of securing the effective realisation of the entitlement in question while ensuring respect for the rights guaranteed by Article 6 of the Convention (see paragraphs 29-42 above).

B. Article 41 of the Convention

48. 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.”

1. Damage

49. The applicant observed that he had been detained in Germany with a view to his extradition from 22 September to 22 November 1999, a period

of 62 days. He submitted that redress for the damage and inconvenience caused by his detention should be afforded at a rate of 100 euros (EUR) per day, and accordingly claimed a total sum of EUR 6,200.

50. The Government observed that the applicant had not established any causal link between the violation of the Convention and the damage he alleged. As regards non-pecuniary damage, the finding of a violation would in itself provide sufficient just satisfaction.

51. The Court reiterates that it will award sums for just satisfaction under Article 41 where the loss or damage alleged has been caused by the violation it has found, but that the State is not expected to pay for damage not attributable to it (see *Perote Pellon v. Spain*, no. 45238/99, § 57, 25 July 2002).

52. In the instant case the Court has found a violation of Article 6 of the Convention in that the applicant, who had been convicted *in absentia*, was unable to have his trial reopened. The applicant would, however, have been detained in Germany with a view to his extradition even if the Italian legal system had afforded him that possibility.

53. Accordingly, the Court does not consider it appropriate to make an award to the applicant in respect of pecuniary damage. No causal link has been established between the violation found and the detention complained of by the applicant.

54. With regard to non-pecuniary damage, the Court considers that, in the circumstances of the case, the finding of a violation constitutes in itself sufficient just satisfaction (see *Brozicek v. Italy*, judgment of 19 December 1989, Series A no. 167, p. 20, § 48; *F.C.B. v. Italy*, cited above, p. 22, § 38; and *T. v. Italy*, cited above, p. 43, § 32).

55. The Court reiterates its settled case-law to the effect that, where there has been a violation of Article 6 § 1 of the Convention, the applicant should as far as possible be put in the position he would have been in had the requirements of that provision not been disregarded (see *Piersack v. Belgium* (Article 50), judgment of 26 October 1984, Series A no. 85, p. 16, § 12). Besides the general measures indicated in paragraphs 44 to 47 above, the Court considers that, where it finds that an applicant has been convicted despite an infringement of his right to participate in his trial, the most appropriate form of redress would, in principle, be trial *de novo* or the reopening of the proceedings, in due course and in accordance with the requirements of Article 6 of the Convention (see *Somogyi*, cited above, § 86; see also, *mutatis mutandis*, in relation to the trial court's lack of independence and impartiality, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003, and *Tahir Duran v. Turkey*, no. 40997/98, § 23, 29 January 2004).

2. *Costs and expenses*

56. The applicant sought the reimbursement of the costs incurred in the extradition proceedings in Germany, amounting to EUR 4,827.11. In respect of the costs incurred in the proceedings before the Court, he claimed EUR 3,500.16, comprising EUR 3,033.88 for fees and EUR 466.28 for translations.

57. The Government failed to see a causal link between the breach of the Convention and the costs incurred in Germany. With regard to those incurred in the Strasbourg proceedings, the Government left the matter to the Court's discretion, while emphasising that the applicant's case was a straightforward one.

58. The Court notes that before applying to the Convention institutions, the applicant was the subject of extradition proceedings in Germany, during which the issue of the impossibility of reopening his trial was raised. The Court consequently accepts that the applicant incurred expenses in order to redress the Convention violation, both in the domestic legal system and at European level (see *Rojas Morales v. Italy*, no. 39676/98, § 42, 16 November 2000). However, it considers the sums claimed for the proceedings in the German courts to be excessive (see, *mutatis mutandis*, *Sakkopoulos v. Greece*, no. 61828/00, § 59, 15 January 2004). Having regard to the information in its possession and to its relevant practice, the Court considers it reasonable to award the applicant the sum of EUR 2,500 under this head.

59. On the other hand, the Court finds the costs and expenses relating to the proceedings before it to be reasonable and awards the applicant the amount sought (EUR 3,500.16). The total amount awarded to the applicant for costs and expenses is therefore EUR 6,000.16.

3. *Default interest*

60. 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 there has been a violation of Article 6 of the Convention;
2. *Holds* that the above violation has originated in a systemic problem connected with the malfunctioning of domestic legislation and practice caused by the lack of an effective mechanism to secure the right of persons convicted *in absentia* – where they have not been informed effectively of the proceedings against them and have not unequivocally

waived their right to appear at their trial – to obtain a fresh determination of the merits of the charge against them by a court which has heard them in accordance with the requirements of Article 6 of the Convention;

3. *Holds* that the respondent State must, through appropriate measures, secure the right in question to the applicant and to other persons in a similar position;
4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant, drawing attention in this connection to its conclusions in paragraph 55 of the present judgment;
5. *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 6,000.16 (six thousand euros and sixteen cents) for costs and expenses, plus any tax that may be chargeable;
 - (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;
6. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in French, and notified in writing on 10 November 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President