



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

FOURTH SECTION

**CASE OF SILDEDZIS v. POLAND**

*(Application no. 45214/99)*

JUDGMENT

STRASBOURG

24 May 2005

**FINAL**

*24/08/2005*

*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 Sildedzis v. Poland,**

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

Sir Nicolas BRATZA, *President*,  
Mr J. CASADEVALL,  
Mr G. BONELLO,  
Mr R. MARUSTE,  
Mr S. PAVLOVSKI,  
Mr L. GARLICKI,  
Mr J. BORRERO BORRERO, *judges*,  
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 3 May 2005,

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

**PROCEDURE**

1. The case originated in an application (no. 45214/99) against the Republic of Poland 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 Polish national, Mr Egon Sildedzis, on 27 July 1998.

2. The applicant was represented by Ms Agnieszka Zemke-Górecka, a lawyer practising in Białystok. The Polish Government ("the Government") were represented by their Agents, Mr Krzysztof Drzewicki, and, subsequently, by Mr Jakub Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that his rights to the peaceful enjoyment of his possessions guaranteed by Article 1 of Protocol No. 1 to the Convention had been breached.

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. By a decision of 13 November 2003, the Court declared the application partly admissible.

7. The applicant died on 17 January 2004. On 28 April 2004 his widow and daughter, Ms Leonarda Sildedzis and Ms Małgorzata Sildedzis, expressed their wish to continue the proceedings before the Court on the applicant's behalf.

8. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

9. On 11 March 1997 the applicant acquired a car – a Renault 21 Nevada - at an auction organised by the Białystok Tax Office. Having subsequently had certain technical defects of the car repaired, the applicant applied to the Białystok Municipal Office for registration. On an unspecified date the Director of the Office refused to do so on the ground that the car was unfit for use and could therefore be used only as scrap-metal. After numerous entreaties of the applicant, the Director orally agreed to register the car on condition that the applicant replaced the engine and a part of the chassis. On 17 March 1997 the applicant requested the Białystok Tax Office to reimburse the costs involved in the acquisition of the new engine and chassis. On 15 April 1997 the Białystok Tax Office declined the applicant's request on unspecified grounds. Subsequently, the applicant ordered a new engine and chassis and made an advance payment in the amount of PLN 3000.

10. On 20 March 1997 the applicant was served with a decision of the Director of the Białystok Municipal Office refusing his request to register the car. The Director referred to the fact that the identification numbers of the engine and chassis had been forged and that that it was therefore impossible to find out who had owned car before its acquisition by the applicant. Therefore, the car could not be considered as a "recovered stolen car" within the meaning of the Annex No. 7 to the ministerial Order of 12 October 1995 (§ 28 below), which was a prerequisite for obtaining new identification numbers. On 23 April 1997 the Białystok Governor upheld the contested decision on the same grounds.

11. In a letter of 5 May 1997 the Warsaw-Śródmieście District Prosecutor expressed regret for the administrative authority's refusal to register the applicant's car and remarked on the lack of consistency in the interpretation of the relevant provisions by the authorities handling the applicant's case. He also suggested that the applicant request the prosecuting authorities, in their capacity as guardians of legal order, to join administrative proceedings on his behalf.

On 7 May 1997 the Białystok Municipal Office informed the applicant that pursuant to the relevant regulations a car of unknown origin could not be registered.

12. On 3 July 1997 the Białystok District Prosecutor refused to institute proceedings against the public servants who had issued the administrative decisions in the applicant's case, finding that they had no case to answer.

13. In reply to the applicant's request, on 27 August 1997 the Ombudsman refused to act on his behalf, considering that the law only allowed new identification numbers to be engraved and the registration to be obtained on conditions which were not met in the applicant's case.

14. On 8 September 1997 the Warszawa-Śródmieście District Prosecutor informed the applicant that the car in question, being "the subject of a criminal offence", had been handed over to the Białystok Tax Office on the basis of a decision concerning exhibits, with a view to selling it at an auction under §§ 1 and 4 of the Regulation of the Council of Ministers of 6 March 1971 (§ 27 below).

15. On 2 October 1997 the Supreme Administrative Court quashed the decisions of 20 March 1997 and 23 April 1997. It found that the administrative authorities had failed to provide any reasons for their refusal of registration. In respect of the new chassis and engine identification numbers, the court noted that a conclusion as to whether "the stolen car has been recovered" had to be based on the final decision given either in the investigative or in the judicial proceedings.

16. By a decision of 13 February 1998 the Białystok Municipal Office stayed the proceedings concerning the permit to engrave new car identification numbers until the question whether the car had been "recovered" within the meaning of the applicable law was settled.

17. By a letter of 17 March 1998 to the Białystok Municipal Office, the Warsaw-Śródmieście District Prosecutor expressed the opinion that, in view of the fact that the Białystok Tax Office had been the legitimate vendor and the applicant, who had purchased the car in good faith, was its legitimate owner, there was no reason for a further delay in registering the car. In reply, the Białystok Municipal Office informed the prosecutor on 31 March 1998 that there was no possibility of registering a vehicle of unknown origin, that is, one lacking original factory numbers.

18. In a letter to the applicant dated 7 May 1998 the Białystok Appellate Prosecutor considered that there were no grounds on which disciplinary proceedings could be instituted against the Białystok prosecutors. All the same, he acknowledged that the case was "a complex one." It could not be denied that the applicant was a legitimate owner of the car which he had purchased from a legitimate vendor. In the prosecutor's view, the difficulty in registering the car stemmed from deficiencies in the legal provisions in specifying the necessary conditions that had to be fulfilled for a car to be registered. These conditions were defined by the Regulation of the Minister

of Transport and Maritime Economy of 1 February 1993 (§ 27 below). He further observed that, according to the Supreme Administrative Court's opinion expressed in the judgment of 2 October 1997, a final decision given either in the investigative or in the judicial proceedings, stating that the car had been stolen, should provide a sufficient basis for its registration (§ 15 above).

19. On 29 May 1998 the Białystok District Prosecutor informed the applicant that there were no grounds for instituting criminal proceedings against the public servants at the Białystok Municipal Office, because it had not been shown that when acting in the applicant's case they had abused their powers. As for the charge of lack of diligence, this could not be proceeded with, given that the applicant had not suffered pecuniary damage which was sufficiently serious, that is in an amount exceeding 50 average salaries.

On the same date the Białystok District Court rejected the applicant's civil claim against the State Treasury for a declaratory judgment. The court considered that the applicant's ownership was not in dispute. Nonetheless, the claim to establish that the car met the legal requirements for its registration could not be examined by a civil court. This would constitute an unacceptable way of controlling the lawfulness of an administrative decision, and it was only the Supreme Administrative Court which had jurisdiction to do so.

20. On 15 June 1998 the Białystok Regional Prosecutor requested the Minister of Transport and Maritime Economy to consider the possibility of granting the applicant, by way of exception, a permit for engraving new car identification numbers. It was argued that in all likelihood the car had been stolen by someone in obscure circumstances to the detriment of an unknown person and subsequently handed over to the tax office to be sold. The fact that the applicant could not be granted the permit to have new car identification numbers engraved had adversely affected his property rights in a manner which, given the circumstances of the case, could not be accepted. This request was later refused by a decision of 24 November 1998.

21. By a decision of 6 August 1998 the Białystok Regional Court quashed the decision of 29 May 1998 given by the Białystok District Court (§ 19 above), considering that since the applicant had not specified his claim, the question whether the civil courts had jurisdiction to entertain his case remained open.

By a decision of 14 October 1998 the Białystok District Court rejected the applicant's civil claim on the same grounds as those relied on in its first decision of 29 May 1998.

22. On 17 December 1998 the Białystok District Court dismissed the applicant's new claim against the State Treasury for a declaratory judgment, considering that a claimant in declaratory civil proceedings could request

the court to determine the existence of a right or of a legal relationship, but that it was not open to the claimant to seek findings of fact in such proceedings.

23. On 23 January 1999 the Warsaw District Prosecutor discontinued the proceedings, instituted at the applicant's request, concerning the theft of the car and the forging of its identification numbers, on the ground that the perpetrator of the offence was unknown.

By a decision of 8 March 1999 the Białystok Municipal Office refused the Białystok Regional Prosecutor's request to resume the stayed proceedings concerning the permit for engraving new car identification numbers (§ 16 above), considering that the original factory car numbers had not been conclusively established. On 18 March 1999 the Białystok Regional Prosecutor lodged an appeal against this decision with the Regional Self-government Board of Appeal, submitting that since a preliminary question concerning the theft of the car had already been determined, the administrative authority was obliged to register the car. By a decision of 22 March 1999 the Board allowed the appeal and quashed this decision.

24. On 15 April 1999 the Białystok Municipal Office again refused to grant the applicant a permit for engraving new identification numbers, concluding that the car could not be considered "recovered by the owner or by an insurance company" since its factory numbers and the original owner had not been established in the course of the investigation. The applicant and the Białystok Regional Prosecutor appealed. The Prosecutor, in his appeal of 5 May 1999, referring to the failure to establish the original owner of the car and its factory numbers, expressed the opinion that the Annex No. 7 to the Order of the Minister of Transport and Maritime Economy of 12 October 1995 did not lay down such a requirement for registration and that therefore the first-instance organ had failed to interpret it correctly.

25. On 3 July 1999 the Białystok Self-government Board of Appeal quashed the impugned decision and referred the case back to the first-instance organ for re-examination, observing that the request should be examined in the light of a new legal situation which had in the meantime changed as a new Regulation had been enacted (see § 29 below).

26. By a decision of 19 July 1999 the Białystok Municipal Office consented to the engraving of new car identification numbers and, as a consequence, registered the applicant's car.

## II. RELEVANT DOMESTIC LAW

27. Pursuant to §§ 1 and 4 of the Regulation of the Council of Ministers of 16 March 1971 (*Rozporządzenie Rady Ministrów z dnia 27.03.1971 w sprawie orzekania o przejściu depozytów na własność Państwa*) courts, prosecutors, administrative authorities, state authorities, state enterprises

and banks are entitled to decide on the seizure of unclaimed objects by the State. Those objects, the prolonged storage of which would create a risk of destruction or a substantial loss in value, or the storage of which would be too costly or whose non-use would be against the public interest, shall be sold.

The relevant part of the Regulation of the Minister of Transport and Maritime Economy of 1 February 1993 on technical conditions and examination of vehicles (*Rozporządzenie Ministra Transportu i Gospodarki Morskiej z 1.02.1993 w sprawie warunków technicznych i badań pojazdów*) provided:

“§ 10. Every vehicle must be equipped with

1) a plate affixed permanently in a easily accessible place, indicating at least:

....

c) the vehicle identification number (VIN), this number should also be engraved on the chassis (bodywork) of a car, ...”

28. Annex No. 7 to the Order of the Minister of Transport and Maritime Economy of 12 October 1995 - Instruction on allocating and engraving chassis (bodywork) numbers and car engines numbers and on manufacturing substitute plates (*Załącznik nr 7 do zarządzenia Ministra Transportu i Gospodarki Morskiej z 12.10.1995 - Instrukcja w sprawie nadawania i wybijania numerów na podwoziach (nadwoziach) i silnikach oraz wykonywania tabliczek zastępczych*) reads as follows:

“§ 2.1. New [identification] numbers shall be allocated and engraved with the permission of the relevant registering authorities only in the following cases:

.....

4) where the chassis (bodywork) numbers or engine numbers of a recovered stolen car have been obliterated or forged.”

29. The Regulation of the Minister of Transport and Maritime Economy of 19 June 1999 on registration and identification of vehicles (*Rozporządzenie Ministra Transportu i Gospodarki Morskiej w sprawie rejestracji i oznaczania pojazdów 19.06.1999*) which entered into force on 1 July 1999 provides that the owner of a car to be registered is not required to submit a certificate of registration (of a car that has been already registered) or a vehicle card (if it has been already issued) in a case where the car has been purchased at a public auction or from a person executing an order for forfeiture of the vehicle to the State Treasury.

## THE LAW

### I. PRELIMINARY OBSERVATIONS

30. The applicant died on 17 January 2004, while the case was pending before the Court (see § 7 above). It has not been disputed that his widow and daughter are entitled to pursue the application on his behalf and the Court sees no reason to hold otherwise (see, *mutatis mutandis*, *Lukanov v. Bulgaria*, judgment of 20 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 540, § 35).

31. The Court must further determine whether the applicant could claim to be a victim of a breach of the Convention, given that on 19 July 1999 a decision allowing him to register his car was eventually given.

The Court recalls that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a “victim” unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, e.g., the *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI). Only when those two conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see *Jensen v. Denmark* (dec.), no. 48470/99, ECHR 2001-X; *Scordino v. Italy* (no.1) (dec.), no. 36813/97, ECHR 2003-IV).

32. These conditions are, however, not satisfied in the present case. The Polish authorities did not acknowledge at any stage of the proceedings the alleged infringement of the Convention. Hence, the fact that the applicant’s request was finally granted after the applicable legislation was repealed which made it possible to have his car registered was not sufficient to remedy the situation he complained of. Therefore, he could claim to be a victim of the alleged violation of Article 1 of Protocol No. 1 to the Convention.

### II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

33. The applicant complained of an infringement of his right to the peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, which reads:

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

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

#### **A. The parties’ arguments**

34. In the applicant’s opinion, the domestic decisions refusing his registration request were arbitrary and, contrary to the Government’s submissions, against the law.

35. The applicant submitted that the interference with his right to the peaceful enjoyment of his possessions had been manifest. He could not register his car, and, as a result, could not use it for a period of over two years, despite being its legal owner. The refusal to register his car for over two years had an obviously negative impact on his business. He had been unable to make up for the financial loss caused by the unjustified interference with his property.

36. In his view, the essential source of this interference was the fact that the Regulation of Minister of Transport (§ 28 above) had given rise to serious difficulties of interpretation concerning car registration. He also invoked the arbitrary and inconsistent manner in which the authorities had interpreted this Regulation.

37. The applicant emphasised the public character of the auction at which he had bought his car, and the fact that the Tax Office and the Public Prosecutor had been involved in the transaction. The applicant contended that the authorities had failed in their duty of informing him that the registration of the car would, in the circumstances of the case, be legally impossible.

38. Lastly, the applicant emphasised that it was only as a result of his case that the difficulties stemming from the text of the Regulation had come to light and that potential purchasers of cars sold at auctions organised by tax offices had begun to be informed that vehicles with forged engine and chassis numbers could not be registered. If he had received such a warning, he would have never exposed himself to a risk of buying a suspect car.

39. The Government acknowledged that the refusal to engrave new identification numbers and to register the applicant’s car, as a result of which he could not use it until 19 July 1999, had amounted to an interference with his right to the peaceful enjoyment of his property. They argued, however, that there had been certain options available to the applicant for disposing of his property, such as for example selling or dismantling it.

40. The Government submitted that the administrative decisions refusing the registration of the applicant’s car were based on the applicable provisions of the domestic law. They pointed out that under Annex No. 7 to

the Order of the Minister of Transport and Maritime Economy of 12 October 1995, the consent for engraving new car identification numbers had been possible only under conditions set out by law. The applicant's situation had not met any of these requirements. This was so as the origin of the car had been uncertain and it was likely that it had been stolen.

41. The Government further argued that under the second paragraph of Article 1 of Protocol No.1 Contracting States had a right to enact such regulations as they deemed necessary to control the use of property in accordance with general interest. This provision left a wide margin of appreciation to the national authorities. In the Government's view, the relevant domestic law concerning car registration pursued the legitimate aim of maintaining the safety of road traffic.

42. The Government further averred that this interference had not imposed on the applicant an excessive individual burden. Unlike the situation which obtained in the case of *Immobiliare Saffi (Immobiliare Saffi v. Italy* [GC], no. 22774/93, ECHR 1999-V), he had not been left in a prolonged state of uncertainty as to when he would be able to repossess his property, since no authority had ever challenged or infringed his right to possess the car. At the time of the purchase the applicant already knew that the car was in a very poor technical condition. He also knew that the engine and chassis numbers were forged. Therefore, he could not have been unaware that the car's origin was uncertain. Nothing prevented the applicant from becoming acquainted with the relevant rules in force at the relevant time, which prevented a car of unknown origin from being duly registered.

43. Finally, the Government emphasised that, following the introduction of new legislation on 1 July 1999, the applicant's request for registration of the car had eventually been granted. They therefore argued that he could no longer claim to be a victim of the alleged breach of the Convention.

## **B. The Court's assessment**

44. The Court reiterates that Article 1 of Protocol No. 1 contains three distinct rules. They have been described thus (see, among other authorities, *Belvedere Alberghiera S.r.l. v. Italy*, no. 31524/96, § 51, ECHR 2000-VI):

"The first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest ... The three rules are not, however, 'distinct' in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule."

45. In the present case, the Court considers that the measure complained of by the applicant, namely the refusal to register the car, amounted to control of the use of property. Accordingly, the alleged interference falls to be examined under the second paragraph of Article 1 of Protocol No. 1 (see *Svidranova v. the Czech Republic*, no. 35268/97, Commission decision of 1 July 1998; *Yaroslavtsev v. Russia*, no. 42138/02, judgment of 2 December 2004, § 32.)

46. An interference with the peaceful enjoyment of possessions must strike a fair balance between the demands of the general interests of the community and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 as a whole. The requisite balance will not be found if the person concerned has had to bear an individual and excessive burden (see, among other authorities, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, pp. 26 and 28, §§ 69 and 73). In other words, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see, for instance, *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A. no. 98, p. 34, § 50).

47. The Court observes that as a result of the refusal to register the car, the applicant was prevented from using it from 11 March 1997, the date on which he bought it at the auction organised by the Tax Office, until 19 July 1999, when a decision allowing for the registration of the car was given. There has therefore been an interference with his rights protected by Article 1 of Protocol No. 1 to the Convention.

48. The Court recalls in this connection that an essential condition for an interference to be deemed compatible with Article 1 of Protocol No. 1 is that it should be lawful. However, the principle of lawfulness also presupposes that the applicable provisions of domestic law be sufficiently accessible, precise and foreseeable (see, among other authorities, *Hentrich v. France*, judgment of 22 September 1994, Series A no. 296-A, pp. 19-20, § 42).

The Court observes in this connection that the interpretation of Annex No.7 to the 1995 Regulation (§ 28 above) in so far as it concerned the applicant's request to have the car registered was the subject of a prolonged dispute between the applicant and the competent authorities. Moreover, the prosecuting authorities, acting in their capacity as guardians of the legal order, agreed to act on the applicant's behalf, considering that there were no justified reasons for the repeated refusals. They reiterated, in their letters to the administrative authorities, that the decisions complained of were unjustified and that the applicable regulations concerned lacked consistency and had given rise to serious difficulties in their interpretation (see §§ 11, 18 and 24 above). The Court further observes that the matter was not resolved

until eventually, in 1999, following the amendment of the relevant legal regulations, the applicant's request was finally granted.

Accordingly, the Court is of the opinion that the legal provisions concerned lacked the required clarity and precision necessary to provide adequate protection against arbitrary interference by the public authorities with the right to the peaceful enjoyment of the applicant's possessions.

49. Even assuming that the applicable provisions of domestic law were sufficiently precise to satisfy the requirements laid down in Article 1 of Protocol No.1, the question arises whether the disputed interference pursued a legitimate aim in the general interest and whether there was a reasonable relationship of proportionality between the means employed and the aim pursued.

50. The Court notes in this connection that the contested provisions of the Regulations on registration of cars and motorcycles pursued the legitimate aim of preventing the registration of vehicles, the lawfulness of whose acquisition could not be shown. The obligation imposed on the applicant by the aforesaid provisions was therefore in the general interest within the meaning of the second paragraph of Article 1 of Protocol No. 1.

51. As regards the proportionality of the interference, the Court observes that the applicant was never suspected of having stolen the car or of having forged the vehicle's identification or chassis numbers or of any fraudulent use of the car. It was not in dispute that he was a buyer in good faith and that he purchased it from a legitimate vendor. In this connection, the Court considers that it must not be overlooked that the car was sold at an auction organised by the Tax Office. The applicant could therefore reasonably expect that the origin of the car was legitimate. Lastly, at the time of the purchase the applicant was not warned of any possible problems that might arise in connection with the registration of the vehicle

52. In the absence of any convincing arguments as to the justification for the interference at issue, which prevented the applicant from using the car for the period of almost two years, the Court concludes that it was disproportionate to the legitimate aim served and, consequently, that the applicant was made to carry an individual and excessive burden. Accordingly, there was a violation of Article 1 of Protocol No. 1 to the Convention in the present case.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant sought compensation for pecuniary damage which he incurred in connection with the case in the amount of PLN 52,000. The applicant argued that this amount consisted of the following expenditure: the price of the car and of the replacement parts he had been obliged to purchase, in the amount of PLN 26,733,83; the losses his business activity incurred in 1987 because of his inability to use the car during the year, in the amount of PLN 14,083,43; court fees, in the amount of PLN 1,392; secretarial expenditure he had incurred in the domestic proceedings in which he tried to obtain the registration, in the amount of PLN 261,07 and, lastly, the costs he had to bear in connection with the closing down of his business, in the amount of PLN 9,529,57.

55. The applicant also sought compensation for non-pecuniary damage suffered as a result of the distress and anguish caused by the violation of his rights in the amount of PLN 48,000.

56. The Government were of the view that there was no causal link between the violation complained of and the amounts claimed by the applicant for pecuniary damage. They further submitted that, in any event, the applicant had failed to substantiate his allegation that the losses he had incurred in his business in 1997 were caused by the refusal to register the car concerned in the present case.

57. As to the amounts claimed under the head of non-pecuniary damage, the Government were of the view that these amounts were excessive and that this claim should therefore be rejected. They requested the Court to hold that the finding of a violation of the Convention would amount to sufficient just satisfaction for the applicant.

58. As regards pecuniary damage, the Court observes that the applicant's claim is partly based on alleged lost business opportunities. It cannot speculate on the amount of profit the applicant might have derived from his business had he had at his effective disposal the car purchased in March 1997. The Court further notes the impossibility of quantifying precisely, on the basis of the arguments submitted by the applicant in support of his just satisfaction claim, the loss of profit sustained in this respect.

However, the Court does not rule out that the applicant may have suffered some loss of opportunity which must be taken into consideration

(*Gawęda v. Poland*, no. 26229/95, 14 March 2002, § 54). Assessing it on an equitable basis and in the light of all the information in its possession, the Court awards the applicant compensation of EUR 3,000 under this head.

59. As to non-pecuniary damage, the Court considers that the applicant sustained damage, such as distress and frustration resulting from the prolonged impossibility to use the car of which he was the rightful owner, which would not be sufficiently compensated by the finding of a violation of the Convention (see, for example, *Elsholz v. Germany* [GC], no. 25735/94, §§ 70-71, ECHR 2000-VIII). Having regard to the circumstances of the case and ruling on an equitable basis, the Court awards the applicant EUR 3,000.

#### **B. Costs and expenses**

60. The applicant, who had been granted legal aid, did not seek reimbursement of costs and expenses relating to the proceedings before the Convention organs and this is not a matter which the Court has to examine of its own motion (see *Motière v. France*, no. 39615/98, § 26, 5 December 2000).

#### **C. Default interest**

61. 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 the applicant's heirs have standing to continue the present proceedings in his stead;
2. *Holds* that the applicant could claim to be a "victim" for the purposes of Article 34 of the Convention;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
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, the following amounts to be converted

into the national currency of the respondent State at the rate applicable at the date of settlement:

- (i) EUR 3000 (three thousand euros) in respect of pecuniary damage;
  - (ii) EUR 3000 (three thousand euros) in respect of non-pecuniary damage;
  - (iii) any tax that may be chargeable on the above amounts;
- (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;

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

Done in English, and notified in writing on 24 May 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE  
Registrar

Nicolas BRATZA  
President