CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF NOVOSELOV v. RUSSIA

(Application no. 66460/01)

JUDGMENT

STRASBOURG

2 June 2005

FINAL

02/09/2005

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 Novoselov v. Russia,

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

Mr C.L. ROZAKIS, *President*,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 12 May 2005,

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

PROCEDURE

1. The case originated in an application (no. 66460/01) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Andrey Ivanovich Novoselov, on 27 November 2000. He was represented before the Court by Ms D. Vedernikova, a lawyer with the European Human Rights Advocacy Centre (EHRAC) in Moscow.

2. The Russian Government ("the Government") were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, a violation of Article 3 of the Convention as regards the conditions of his detention in facility no. 18/3 of Novorossiysk.

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. By a decision of 8 July 2004, the Court declared the application partly admissible.

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

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1961 and lives in Krasnodar.

A. Placement in custody and detention in facility no. IZ-18/3

9. On 26 June 1998 the applicant had a loud quarrel with his neighbour and assaulted him. Further to the neighbour's complaint, the police opened criminal proceedings against the applicant.

10. On 27 October 1998 the applicant was taken in custody and placed in investigations ward no. IZ-18/3 of Novorossiysk* (*ИЗ 18/3 г. Новороссийска*, "the facility").

11. On 5 November 1998 the Oktyabrskiy District Court of Novorossiysk found the applicant guilty of disorderly behaviour, an offence under Article 213 § 1 of the Russian Criminal Code, and sentenced him to six months' imprisonment.

12. The applicant served the sentence in the same facility. He was released on 28 April 1999.

13. The applicant stayed in cells nos. 11 and 3.

14. According to the applicant, each cell measured approximately 42 m^2 and accommodated 42 to 51 inmates. Inmates took turns to sleep. Thirty sleeping places were available, of which two were occupied with water receptacles for washing and flushing the toilet. The water containers were needed as running water was only available for one hour three times a day. No bedding was provided to inmates, save for tattered cotton mattresses. Between 5 November and 28 December 1998 in cell no. 11 the applicant had to sleep without a mattress on metal plates, covering himself with an old, dirty and worn cotton rag.

15. The Government did not dispute the cell measurements suggested by the applicant. They submitted that each cell had had 30 sleeping places, a full set of bedding had been distributed to each inmate and sleeping berths had been made of metal plates and covered with wadded mattresses.

16. According to the applicant, the ventilation in cells was only switched on for a few minutes when "inspectors" visited the facility. Windows were covered with steel plates leaving an open slot of about 10 cm. There was no fresh air in the cells.

17. The Government submitted that cells had been equipped with ventilation. It was switched on and off "in accordance with the schedule approved by the facility director" (order no. 41 of 26 May 1998). A copy of

* On 13 June 2001 facility no. 18/3 was assigned a new number, 23/3.

the schedule has not been produced to the Court. On “especially hot” days, doors were open to ensure a better circulation of air. At the material time windows had been covered with metal shields which were removed in 2002.

18. According to the applicant, the lavatory pan sat on an elevation of 0.5 m above the floor. A partition of 1.1 m in height separated it from the rest of the cell. Occasionally an inmate hung a sheet to have some privacy. According to the Government, lavatory pans were located at the entrance and separated from the living area by a brick partition measuring 1.3 m in height and width.

19. According to the applicant, inmates were given one piece of soap per week for the entire cell population. No laundry detergent was available. According to the Government, each inmate received 200 g of washing soap and 70 g of laundry detergent each month. Bathing was possible “regularly”.

20. The applicant claimed that a thick, black and footworn layer of dirt had covered the floor. Inmates' clothing swarmed with lice, spiders and other insects. Between 5 November 1998 and 15 January 1999 cell no. 11 was not once sanitised. Between 15 January and 28 April 1999 cell no. 3 was sanitised on one occasion. In the Government's view, the sanitary and hygienic conditions of the cells were up to the applicable standards and insecticide was distributed every month.

21. According to the applicant, the facility administration took complaints, requests and letters from inmates once a day, between 4.30 and 5 a.m. According to the Government, complaints and requests were taken from inmates during the morning inspection of cells starting at 8 a.m.

22. The applicant further submitted that the food ration had consisted of bread, millet porridge, boiled pearl barley and no-meat soup. In six months inmates were fed on five occasions with pea soup, soup with pasta and boiled rice.

23. In April 1999 the applicant contracted scabies and he received sulphuric and benzyl ointments to treat himself. He was not isolated from other inmates. The applicant's cellmates who contracted scabies and other skin diseases were not taken out of the cell either. The applicant submits that tuberculosis-infected inmates spent, on several occasions, a few days in his cell. According to the Government, infected inmates were isolated in a special wing. The applicant twice fell ill with a high temperature and he was treated with sulphadimisin and aspirin. From 13 to 20 April 1999 the applicant underwent outpatient treatment for dermatitis.

24. By the time of his release, the applicant had lost 15 kilograms in weight, he felt short of breath while walking, tired easily, could not run, and suffered from pustules and itching all over his body.

25. On 5 May 1999 the applicant was examined in clinic no. 1 of Novorossiysk and issued with a certificate confirming that he suffered from emaciation.

B. Proceedings for compensation

26. On 30 July 2002 the applicant filed a civil action for damages against the Treasury of the Russian Federation. He claimed compensation for non-pecuniary damage caused by "inhuman and degrading" conditions of detention in facility no. 18/3. He described the conditions of his detention in detail and relied, in particular, on Article 3 of the Convention.

27. On 1 October 2002 the Pervomayskiy District Court of the Krasnodar Region dismissed the applicant's action. It held that the applicant had failed to prove that the officials of facility no. 18/3 had been liable for pecuniary or non-pecuniary damage allegedly caused to him. The court noted that the applicant had served his sentence upon the lawful conviction by a competent court and, therefore, the responsibility of the treasury was not engaged.

28. On 14 November 2002 the Krasnodar Regional Court upheld, on an appeal by the applicant, the judgment of 1 October 2002.

II. RELEVANT DOMESTIC LAW

Code on Execution of Sentences (of 8 January 1997)

29. Persons sentenced to no longer than six months' imprisonment may consent to serving the sentence in investigations wards (Article 74 § 1).

30. The norm of habitable floor surface per one inmate is fixed at 2.5 m^2 in prisons (Article 99 § 1). Inmates shall have individual sleeping places and bedding, as well as personal hygiene articles (soap, toothbrush, toothpaste, toilet paper, disposable shavers) (Article 99 § 2).

Tort liability of State agencies

31. Article 1064 § 1 of the Civil Code of the Russian Federation provides that the damage caused to the person or property of a citizen shall be compensated in full by the tortfeasor. Pursuant to Article 1069, a State agency or a State official shall be liable to a citizen for damage caused by their unlawful actions or failure to act. Such damage is to be compensated at the expense of the federal or regional treasury.

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

32. The relevant extracts from the General Reports by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) read as follows:

Extracts from the 2nd General Report [CPT/Inf (92) 3]

"46. Overcrowding is an issue of direct relevance to the CPT's mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint.

47. A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners... [P]risoners cannot simply be left to languish for weeks, possibly months, locked up in their cells, and this regardless of how good material conditions might be within the cells. The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature...

48. Specific mention should be made of outdoor exercise. The requirement that prisoners be allowed at least one hour of exercise in the open air every day is widely accepted as a basic safeguard... It is also axiomatic that outdoor exercise facilities should be reasonably spacious...

49. Ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment...

50. The CPT would add that it is particularly concerned when it finds a combination of overcrowding, poor regime activities and inadequate access to toilet/washing facilities in the same establishment. The cumulative effect of such conditions can prove extremely detrimental to prisoners.

51. It is also very important for prisoners to maintain reasonably good contact with the outside world. Above all, a prisoner must be given the means of safeguarding his relationships with his family and close friends. The guiding principle should be the promotion of contact with the outside world; any limitations upon such contact should be based exclusively on security concerns of an appreciable nature or resource considerations..."

Extracts from the 7th General Report [CPT/Inf (97) 10]

"13. As the CPT pointed out in its 2nd General Report, prison overcrowding is an issue of direct relevance to the Committee's mandate (cf. CPT/Inf (92) 3, paragraph 46). An overcrowded prison entails cramped and unhygienic accommodation; a constant lack of privacy (even when performing such basic tasks as using a sanitary facility); reduced out-of-cell activities, due to demand outstripping the staff and facilities available; overburdened health-care services; increased tension and hence more violence between prisoners and between prisoners and staff. This list is far from exhaustive.

The CPT has been led to conclude on more than one occasion that the adverse effects of overcrowding have resulted in inhuman and degrading conditions of detention..."

Extracts from the 11th General Report [CPT/Inf (2001) 16]

"28. The phenomenon of prison overcrowding continues to blight penitentiary systems across Europe and seriously undermines attempts to improve conditions of detention. The negative effects of prison overcrowding have already been highlighted in previous General Reports...

29. In a number of countries visited by the CPT, particularly in central and eastern Europe, inmate accommodation often consists of large capacity dormitories which contain all or most of the facilities used by prisoners on a daily basis, such as sleeping and living areas as well as sanitary facilities. The CPT has objections to the very principle of such accommodation arrangements in closed prisons and those objections are reinforced when, as is frequently the case, the dormitories in question are found to hold prisoners under extremely cramped and insalubrious conditions... Large-capacity dormitories inevitably imply a lack of privacy for prisoners in their everyday lives... All these problems are exacerbated when the numbers held go beyond a reasonable occupancy level; further, in such a situation the excessive burden on communal facilities such as washbasins or lavatories and the insufficient ventilation for so many persons will often lead to deplorable conditions.

30. The CPT frequently encounters devices, such as metal shutters, slats, or plates fitted to cell windows, which deprive prisoners of access to natural light and prevent fresh air from entering the accommodation. They are a particularly common feature of establishments holding pre-trial prisoners. The CPT fully accepts that specific security measures designed to prevent the risk of collusion and/or criminal activities may well be required in respect of certain prisoners... [E]ven when such measures are required, they should never involve depriving the prisoners concerned of natural light and fresh air. The latter are basic elements of life which every prisoner is entitled to enjoy..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

33. The applicant complained under Article 3 of the Convention about the conditions of his detention in facility no. 18/3 of Novorossiysk and the damage to his health sustained during the detention. Article 3 reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Submissions of the parties

34. The applicant submitted that throughout the term of his detention, the facility had been severely overcrowded, with the result that each inmate had been afforded less than 1 m^2 of floor space. The overcrowding produced

devastating effects on him, to which the CPT consistently referred in its reports (in particular, 7th General Report, § 13). An additional aspect of the crammed and insalubrious conditions was the lack of any partition separating the lavatory pan from the living area and, in particular, from the dining table fixed to the floor barely one metre away. The ventilation did not function most of the time and steel plates fitted to cell windows blocked access of fresh air (cf., 11th General Report, § 30). The lack of adequate ventilation was further aggravated by a general tolerance to smoking in the cell. For the applicant, who was a non-smoker, that was another severe, inescapable effect of the overcrowding. Other factors indicating the degrading character of the conditions of detention were the appalling quality of nutrition, the absence of bedding, swarming of insects, and the inadequate supplies of detergents. In the detention the applicant contracted scabies; he was given some treatment but was not isolated from other inmates. He twice had high fever and by the time of his release, he lost 15 kg in weight and was generally exhausted.

35. In support of his submissions the applicant referred to the reports "on situation with human rights in the Krasnodar Region" produced by the regional NGO, the "Krasnodar Human Rights Centre", in 1999 and 2000, that had recorded general problems in penitentiary institutions in the Krasnodar Region, such as overcrowding, the inadequate quality of food, the shortage of medical equipment and medicines and the spread of tuberculosis and AIDS. The applicant produced a handwritten statement by Mr Vdovin who had been detained in cells nos. 23 and 76 of the same facility from 28 November 1998 to May 1999. The applicant also referred to the medical certificate of 5 May 1999 (see paragraph 25 above).

36. The Government conceded that the applicant had been detained "during the period when the detention facilities were overcrowded". They submitted that "the overcrowding of that detention facility (as well as of many other similar facilities at the material time) was caused by objective reasons (such as the high delinquency rate, the lack of State funding sufficient to maintain the standard of floor space for all detainees)". However, in their view, the facility administration applied its best efforts to ensure the conditions of detention compatible with the requirements of Russian laws. Finally, they submitted that the domestic courts had rightly refused to award compensation to the applicant as no fault on the part of the facility personnel could have been established.

37. The Government claimed that the applicant had failed to support his allegations of degrading treatment with appropriate evidence. There is no indication that the detention adversely affected his health. The issuing of a medical certificate of 5 May 1999 is not recorded in the registration files of clinic no. 1 of Novorossiysk. Nor did the applicant produce a copy of relevant pages of his medical record or any other certificates showing that he had contracted scabies or suffered from emaciation.

B. The Court's assessment

38. As the Court has held on many occasions, Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (*Labita v. Italy*, judgment of 6 April 2000, *Reports of Judgments and Decisions* 2000-IV, § 119). However, to fall under Article 3 of the Convention, ill-treatment must attain a minimum level of severity. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (*Valašinas v. Lithuania*, no. 44558/98, §§ 100-101, ECHR 2001-VIII).

39. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Under this provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (*Valašinas*, cited above, § 102; *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI). When assessing conditions of detention, one must consider their cumulative effects as well as the applicant's specific allegations (*Dougoz v. Greece*, judgment of 6 March 2001, *Reports* 2001-II, § 46). The duration of detention is also a relevant factor.

40. The Court notes that in the present case the parties have disputed the actual conditions of the applicant's detention at facility no. IZ-18/3 of Novorossiysk. However, in the present case the Court does not consider it necessary to establish the truthfulness of each and every allegation of the parties, because it may find a violation of Article 3 on the basis of the facts that have been presented or undisputed by the respondent Government, for the following reasons.

41. The main characteristic, which the parties have in principle agreed upon, is the number of inmates who were held in the applicant's cells at the material time. The applicant alleged that the cells had been overpopulated; the Government did not dispute this allegation (see paragraphs 15 and 36 above). It appears that the applicant spent the entire six-month term of his detention in cells that measured 42 m^2 and accommodated up to 51 inmates, for whom 28 or 30 bunk beds were available. He was thus afforded less than 1 m^2 of personal space and shared a sleeping place with other inmates, taking turns with them to get a rest. Save for one hour of daily outside

exercise, the applicant was confined to his cell for 23 hours a day. In these circumstances, the extreme lack of space weighs heavily as an aspect to be taken into account for the purpose of establishing whether the impugned detention conditions were "degrading" from the point of view of Article 3.

42. In this connection the Court recalls that in the *Peers* case even a much bigger cell – namely that of 7 m^2 for two inmates – was noted as a relevant aspect for finding a violation of Article 3, albeit in that case the space factor was coupled with the established lack of ventilation and lighting (*Peers v. Greece*, no. 28524/95, §§ 70-72, ECHR 2001-III). The applicant's situation was also comparable with that in the *Kalashnikov* case, where the applicant had been confined to a space measuring less than 2 m^2. In that case the Court held that such a degree of overcrowding raised in itself an issue under Article 3 of the Convention (*Kalashnikov v. Russia*, no. 47095/99, §§ 96-97, ECHR 2002-VI). By contrast, in some other cases no violation of Article 3 was found, as the restricted space in the sleeping facilities was compensated by the freedom of movement enjoyed by the detainees during the day-time (*Valašinas*, cited above, §§ 103 and 107; *Nurmagomedov v. Russia* (dec.), no. 30138/02, 16 September 2004).

43. Hence, as in those cases, the Court considers the extreme lack of space to be the focal point for its analysis of compatibility of the conditions of the applicant's detention with Article 3. The fact that the applicant was obliged to live, sleep and use the toilet in the same cell with so many other inmates was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and arouse in him the feelings of fear, anguish and inferiority capable of humiliating and debasing him (*Peers* and *Kalashnikov*, cited above, *loc. cit.*; see also the CPT's 11th General Report [CPT/Inf (2001) 16], § 29).

44. Furthermore, while in the present case it cannot be established "beyond reasonable doubt" that the ventilation, heating, lighting or sanitary conditions in the facility were unacceptable from the point of view of Article 3, the Court nonetheless notes the Government's admissions that the cell windows were covered with metal shutters blocking access of fresh air and natural light and that the applicant had twice fallen ill with fever and contracted dermatitis while in detention (see paragraphs 17 and 23 above). These aspects, while not in themselves capable of justifying the notion of "degrading" treatment, are relevant in addition to the focal factor of the severe overcrowding, to show that the applicant's detention conditions went beyond the threshold tolerated by Article 3 of the Convention.

45. Finally, as regards the Government's submissions that the overcrowding was due to objective reasons and that the facility officials could not be held liable for it, the Court reiterates that, although the question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the absence of any such purpose cannot exclude a finding of violation of Article 3 (*Peers v. Greece*, cited above,

loc. cit.; *Kalashnikov v. Russia*, cited above, § 101). Even if there had been no fault on the part of the facility officials, it should be emphasised that the Governments are answerable under the Convention for the acts of any State agency since what is in issue in all cases before the Court is the international responsibility of the State (*Lukanov v. Bulgaria*, judgment of 20 March 1997, *Reports of Judgments and Decisions* 1997-II, § 40).

46. The Court therefore finds that there has been a violation of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicant claimed 12,000 euros (EUR) in respect of compensation for non-pecuniary damage. He submitted that adverse physical and mental effects of degrading conditions of detention, such as physical emaciation and feelings of humiliation, distress and anxiety, cannot be compensated solely by the finding of a violation. He referred to comparable awards in the cases of *Peers v. Greece* (no. 28524/95, ECHR 2001-III, 5,000,000 Greek drachmas [approximately EUR 14,600]) and *McGlinchey and Others v. the United Kingdom* (no. 50390/99, ECHR 2003-V, EUR 11,500).

49. The Government contested his claims as excessive and unjust. In their view, an eventual award should be made with regard to that in the case of *Kalashnikov v. Russia*, in which the Court awarded EUR 5,000 as compensation for violations of the applicant's rights under Articles 3, 5 and 6, although Mr Kalashnikov's term of detention was much longer.

50. The Court accepts that the applicant suffered humiliation and distress because of the degrading conditions of his detention. Making its assessment on an equitable basis and taking into account, in particular, the term of the applicant's detention, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

51. The applicant claimed 1,150 euros (EUR) for 23 hours of work of Ms Vedernikova in Moscow, 1,000 British pounds for 10 hours of work of Messrs Leach and Bowring in London, and 16,590 Russian roubles (RUR) in respect of their travel expenses relating to their visit to Krasnodar for a meeting with him. He further claimed 20 per cent of the amount awarded, which would be due under a contingency agreement with Mr Shamparov who represented him in the domestic proceedings.

52. The Government contested the claim for costs. They noted that the power of attorney issued to Mr Shamparov had already expired and that London counsel were not the applicant's representatives before the Court.

53. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum.

54. As regards the domestic proceedings, it appears that Mr Shamparov offered legal advice to the applicant in many domestic proceedings, to which the applicant was a party. Since the applicant's other complaints were declared inadmissible at earlier stages, the Court considers it reasonable to take into account only the fees paid to Mr Shamparov in the civil proceedings concerning compensation for inhuman conditions of detention. On the basis of documents in its possession, the Court finds that these fees amounted to RUR 12,000, which amount it awards the applicant, plus any tax that may be chargeable thereon.

55. As regards the Strasbourg proceedings, the Court considers that the expenses claimed in respect of London counsel have not been shown to have been necessarily incurred. Having regard to the criteria laid down in its case-law cited above, the Court awards EUR 1,300 in respect of Ms Vedernikova's legal and travel expenses, plus any tax that may be chargeable on this amount, payable into the bank account of the European Human Rights Advocacy Centre in Moscow.

C. Default interest

56. 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 3 of the Convention;

2. *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:

(i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;

(ii) RUR 12,000 (twelve thousand Russian roubles) in respect of costs and expenses incurred in the domestic proceedings;

(iii) EUR 1,300 (one thousand three hundred euros) in respect of costs and expenses incurred in the Strasbourg proceedings, to be converted into Russian roubles at the rate applicable at the date of settlement and paid into the bank account of the European Human Rights Advocacy Centre in Moscow;

(iv) 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;

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

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

Søren NIELSEN
Registrar

Christos ROZAKIS
President