CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF KUKALO v. RUSSIA

(Application no. 63995/00)

JUDGMENT

STRASBOURG

3 November 2005

FINAL

03/02/2006

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 Kukalo v. Russia,

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

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 13 October 2005,

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

PROCEDURE

1. The case originated in an application (no. 63995/00) 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, Mikhail Mikhaylovich Kukalo ("the applicant"), on 17 October 2000.

2. The applicant was represented by Mr I. V. Kokorin, a lawyer practising in Kurgan. The Russian Government ("the Government") were represented by Mr P. A. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that a prolonged non-execution of final judgments in his favour was incompatible with 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. By a decision of 3 June 2004, the Court declared the application partly admissible.

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

7. 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).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1941 and lives in Kurgan.

9. In 1986 the applicant was called up by the authorities to take part in emergency operations at the site of the Chernobyl nuclear plant disaster. As a result, the applicant suffered from extensive exposure to radioactive emissions.

10. In 1997 following an expert opinion of 14 April 1997, which established the link between the applicant's poor health and his involvement in the Chernobyl events, the applicant was granted monthly health damage compensation.

A. Judgment of 12 May 1999 as clarified on 7 September 1999

11. On 18 February 1999 the applicant brought proceedings against the Kurgan Social Security Service (*МУ «Центр социальной защиты населения г. Кургана»*) to challenge the amount of compensation which he considered to be erroneous.

12. On 12 May 1999 the Kurgan Town Court found for the applicant and ordered the Social Security Service to make monthly compensation payments of 1,350.58 Russian roubles (RUR) and pay outstanding amount due from 14 April 1997. The parties did not appeal, and the judgment entered into force on 25 May 1999.

13. Following the applicant's request, the Town Court clarified, by its decision of 7 September 1999 which became final on 18 September 1999, that the amount of the outstanding compensation totalled RUR 24,495.94.

14. The judgment of 12 May 1999 was executed on 6 October 2000.

B. Judgment of 21 July 1999 as upheld on 5 October 1999

15. On an unspecified date the applicant brought proceedings against the Social Security Service for damages caused by the delay in execution of the judgment of 12 May 1999.

16. On 21 July 1999 the Town Court found that the Social Security Service had failed to comply timely with the judgment of 12 May 1999 and awarded the applicant RUR 1,000 as a penalty for the delay.

17. On 5 October 1999 the Kurgan Regional Court upheld the judgment on appeal.

18. On 18 October 1999 the Kurgan Bailiff's Service instituted enforcement proceedings.

19. The judgment of 21 July 1999 was executed on 26 August 2002.

C. Judgment of 10 May 2000 as upheld on 22 June 2000

20. On 10 May 2000 the Town Court allowed the applicant's claim against the Kurgan Town Council for provision of State housing, for which he was eligible as a participant of the liquidation of the Chernobyl disaster. The court ordered the Town Council to provide the applicant and his wife with separate well-equipped residential premises located in the town of Kurgan, complying with sanitary and technical standards, having total surface of no less than 52 sq. m., taking into account the applicant's entitlement to one additional room.

21. On 22 June 2000 the Regional Court upheld the judgment on appeal.

22. On 10 July 2000 the Kurgan Bailiff's Service instituted enforcement proceedings.

23. The Town Council requested for deferment in execution of the judgment until 1 July 2001 for the reasons of the lack of relevant provisions in the town budget for the year 2000 and big expenses incurred by the Town Council in connection with the repair of damage caused by flood. By its decision of 17 July 2000 the Town Court granted the deferment until 31 December 2000.

24. At the beginning of 2001 the Town Council asked for another deferment explaining that the town had to finance preventive measures in connection with the new threat of flood in spring 2001. As the local authority did not carry out any housing construction, the execution of the applicant's judgment was only possible by acquiring a flat on the market. On 20 February 2001 the court granted the deferment until 1 October 2001. On 29 March 2001 this decision was upheld on appeal by the Kurgan Regional Court.

25. On 20 November 2001 the applicant lodged an application with the Town Council asking it to acquire for him a flat located at 26 Blyukher street no. 27 with a total surface of 56.2 sq. m. The applicant stated that he undertook to make a partial contribution in the amount of RUR 65,000 towards the cost of the flat. The applicant also stated in the application that he would not have any further claims to the Town Council if his request was granted.

26. By Resolution of 21 December 2001 the Mayor of Kurgan ordered to grant the applicant a flat at 26 Blyukher street no. 27 of 56.2 sq. m. total surface in execution of the judgment of 10 May 2000.

D. Judgment of 16 May 2000

27. In February 2000 the applicant brought another action against the Social Security Service to challenge the amount of the compensation.

28. On 16 May 2000 the Town Court fixed the monthly compensation at RUR 1,814.13 starting from 8 February 2000. The parties did not appeal, and the judgment came into force on 27 May 2000.

29. On 5 June 2000 the Kurgan Bailiff's Service instituted enforcement proceedings.

30. The judgment of 16 May 2000 was enforced on 26 August 2002.

II. RELEVANT DOMESTIC LAW

A. Enforcement proceedings

31. Section 9 of the Enforcement Proceedings Act (Law no. 119-FZ of 21 July 1997) provides that a bailiff's order on institution of enforcement proceedings must fix a time-limit for the defendant's voluntary compliance with a writ of execution. The time-limit may not exceed five days. The bailiff must also warn the defendant that coercive action will follow should the defendant fail to comply with the time-limit. Pursuant to section 13, the enforcement proceedings must be completed within two months of the receipt of the writ of execution by the bailiff.

B. Implementation of the right to a "social tenancy"

32. The RSFSR Housing Code (Law of 24 June 1983, effective until 1 March 2005) provided that Russian citizens were entitled to possess flats owned by the State or municipal authorities or other public bodies, under the terms of a tenancy agreement (section 10). Certain "protected" categories of individuals (disabled persons, war veterans, Chernobyl victims, police officers, judges, etc.) had a right to priority treatment in the allocation of flats.

33. A decision on granting a flat was to be implemented by way of issuing the citizen with an occupancy voucher (*ордер на жилое помещение*) from the local municipal authority (section 47). The voucher served as the legal basis for taking possession of the flat designated therein and for the signing of a tenancy agreement between the landlord, the tenant and the housing maintenance authority (section 51, and also Articles 672 and 674 of the Civil Code).

34. Members of the tenant's family (including the spouse, children, parents, disabled dependants and other persons) had the same rights and obligations under the tenancy agreement as the tenant (section 53). The tenant had the right to accommodate other persons in the flat (section 54). In the event of the tenant's death, an adult member of the tenant's family succeeded him or her as a party to the tenancy agreement (section 88).

35. Flats were granted for permanent use (section 10). The tenant could terminate the tenancy agreement at any moment, with the consent of his or her family members (section 89). The landlord could terminate the agreement on the grounds provided for by law and on the basis of a court decision (sections 89-90). If the agreement was terminated because the house was no longer fit for living in, the tenant and family were to receive a substitute flat with full amenities (section 91). Tenants or members of their family could be evicted without provision of substitute accommodation only if they "systematically destroyed or damaged the flat", "used it for purposes other than residence" or "systematically breached the [generally accepted rules of conduct] making life with others impossible" (section 98).

36. The tenant had the right to exchange the flat for another flat in the State or municipal housing, including across regions (section 67). An exchange involved reciprocal transfer of rights and obligations under the respective tenancy agreements and became final from the moment of issuing new occupancy vouchers (section 71). "Speculative" or sham exchanges were prohibited (section 73(2)).

C. Rent for State housing

37. The Federal Housing Policy Act (Law no. 4218-I of 24 December 1992) provides that the payments for a flat comprise (i) a housing maintenance charge, (ii) a housing repair charge, and, in the case of tenants only, (iii) rent (section 15). The maintenance and repair charges do not depend on the flat's ownership, whether private or State. Rent is fixed by regional authorities, taking into account the surface area and quality of the housing. It is usually considerably lower than free-market rent. For example, the highest monthly rent for municipal housing in Moscow is 80 kopecks (0.02 euro) per square metre (Resolution of the Moscow Government no. 863-PP of 7 December 2004).

D. Privatisation of State housing

38. In 1991, the Privatisation of Housing Act (Law no. 1541-I of 4 July 1991) was adopted (it will remain effective until 31 December 2006). It grants Russian citizens the right to acquire title to State and municipal-owned flats of which they have taken possession on the basis of a social tenancy agreement (section 2). The acquisition of title does not require any payment or fee (section 7). The right to privatisation can be exercised once in a lifetime (section 11) and requires the consent of all adult family members.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

39. In their observations of 1 September 2004 the Government submitted that by a judgment of the Kurgan Town Court of 6 June 2003 the amounts due to the applicant under judgments of the Kurgan Town Court of 26 April 2000, 16 May 2000 (RUR 5,188) and 6 February 2001 were index-linked in line with inflation in view of the delay in execution of those judgments. The Government further submitted that as a part of their friendly settlement efforts the applicant was offered compensation of non-pecuniary damage caused by the delay in execution of the judgments, on condition that he would withdraw his application from the Court. The applicant refused. The Government concluded that the applicant's rights were restored and invited the Court to discontinue the examination of the complaint in accordance with Article 37 § 1 of the Convention.

40. In their letter of 1 March 2005 the Government further reiterated that since the applicant had refused to accept the settlement of the case on the terms proposed by the Government, he lost his victim's status. Therefore his application should be struck out of the Court's list of cases.

41. The applicant disagreed and invited the Court to proceed with the examination of the case.

42. The Court notes first that the judgment of 6 June 2003, to which the Government referred, concerned judgments of the Kurgan Town Court of 26 April 2000 and 6 February 2001 which are not within the scope of the Court's examination in the present case. It also concerned a judgment of the Kurgan Town Court of 16 May 2000 by which the applicant was awarded RUR 5,188. The present case however concerns only the judgment of the same date by which the Kurgan Town Court ordered the payment of the monthly compensation in the amount of RUR 1,814.13 starting from 8 February 2000 (see paragraph 28 above). In the absence of any explanations by the Government about those inconsistencies, the Court does not find it necessary to examine their objection in this respect.

43. As regards the applicant's refusal to accept the settlement of the case proposed by the Government, the Court recalls that under certain circumstances an application may indeed be struck out under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 76, ECHR 2003-...). It notes, however, that this procedure is an exceptional one and is not, as such, intended to circumvent the applicant's opposition to a friendly settlement. Furthermore, it observes that the Government failed to submit with the Court any formal unilateral declaration capable of offering a

sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (see, by contrast, *Aleksentseva and 28 Others v. Russia*, nos. 75025/01 *et seq.*, 4 September 2003).

44. In view of the above considerations, the Court rejects the Government's request to strike the application out under Article 37 of the Convention and will accordingly pursue its examination of the merits of the case.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

45. The applicant complained that the prolonged failure to enforce the judgments of 12 May 1999, as clarified on 7 September 1999, 21 July 1999, as upheld on 5 October 1999, 10 May 2000, as upheld on 22 June 2000, and 16 May 2000 violated Article 6 of the Convention and his right to the peaceful enjoyment of possessions under Article 1 of Protocol No. 1. The relevant parts of Article 6 provide as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

Article 1 of Protocol No. 1 reads as follows:

> "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' submissions

46. The Government, in their observations of 1 September 2004, submitted that the judgments had been enforced and the delay in their enforcement had been objectively justified. Thus, when the execution of the judgment of 10 May 2000 was pending there were 14,310 individuals who were registered by the Town Council as those entitled to the provision of free housing, including 43 Chernobyl victims. Giving priority treatment to the applicant would have breached the rights of others. Taking into account the deferments of the enforcement of the judgment of 10 May 2000 granted by the Kurgan Town Court, the period of the enforcement of that judgment should not be considered unreasonable. The Government noted that a State

flat previously occupied by the applicant was let for other members of the applicant's family.

47. The applicant submitted that the reason for the prolonged non-execution of the judgments was not the lack of funds but the failure of the State to carry out its commitments in relation to the Chernobyl victims. The delays in execution of the judgments undermined his right to benefit from the results of the litigation especially taking into account the high level of inflation in the country. As regards the judgment of 10 May 2000, the applicant submitted that the flat granted to him required major renovation works. His request to the Town Council for acquiring the flat which was eventually granted to him was written under duress because otherwise he would have waited for a flat for an indefinite period of time.

B. The Court's assessment

1. Alleged violation of Article 6 § 1 of the Convention

48. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail the procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6 (see *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III; *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 510, § 40).

49. The Court further reiterates that it is not open to a State authority to cite the lack of funds or other resources (such as housing) as an excuse for not honouring a judgment debt. Admittedly, a delay in the execution of a judgment may be justified in particular circumstances, but the delay may not be such as to impair the essence of the right protected under Article 6 § 1. The applicant should not be prevented from benefiting from the success of the litigation on the ground of alleged financial difficulties experienced by the State (see *Burdov*, cited above, § 35).

50. The present case concerns one judgment awarding the applicant housing and three judgments awarding him monetary funds. The Court will examine the situation in relation to each category in turn.

(a) Judgment of 10 May 2000 as upheld on 22 June 2000

51. The Court notes that the judgment of 10 May 2000, by which the applicant was to be granted housing, remained unenforced until 21 December 2001, for about a year and a half. In so far as the applicant may be understood as alleging that the flat granted to him did not meet the terms of the judgment, the Court notes that on 20 November 2001 the applicant asked the Town Council to acquire for him that specific flat undertaking to make a contribution towards its cost and stating that he would not have any further claims with respect to the housing if his request was granted. It appears that following the applicant's request the Town Council acquired the flat and let it to the applicant on a "social tenancy" agreement. There is no indication that the applicant ever complained in domestic court or before any other competent authority that he lodged the application of 20 November 2001 under duress, that the Town Council had to repay his contribution or that the flat did not meet the terms of the judgment of 10 May 2000. In these circumstances the Court accepts the Government's view that the judgment was enforced. It will further examine whether the delay in its enforcement was justified.

52. The Court notes that the Kurgan Town Court granted on two occasions deferments in execution of the judgment, for approximately five and six months, in both instances for the reason of the lack of financial resources taking into account the need to finance flood defence works. Though the alleged lack of State funds cannot as such serve an excuse for not honouring a judgment debt, the delay of a year and a half in the circumstances does not appear to have impaired the essence of the right protected under Article 6 § 1.

53. There has, therefore, been no violation of Article 6 § 1 of the Convention.

(b) Judgments of 12 May 1999, as clarified on 7 September 1999, 21 July 1999, as upheld on 5 October 1999, and 16 May 2000

54. The Court notes that the judgment of 12 May 1999 remained inoperative for more than a year and four months, including a year after the judgment of 21 July 1999 had been adopted to redress the non-enforcement of the first one. The judgment of 21 July 1999, in its turn, remained inoperative for more than two years and ten months. As regards the judgment of 16 May 2000, it took the State more than two years and two months to enforce it. No justification was advanced by the Government for those delays. The Court considers that in the circumstances, by failing for the above periods of time to take the necessary measures to comply with the

final judicial decisions in the present case, the Russian authorities have deprived the provisions of Article 6 § 1 of all useful effect.

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

2. Alleged violation of Article 1 of Protocol No. 1

56. The Court reiterates at the outset that the concept of "possessions" in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to ownership of physical goods and is independent from the formal classification in domestic law: certain other rights and interests constituting assets can also be regarded as property rights, and thus as "possessions" for the purposes of this provision (see *Beyeler v. Italy* [GC], no. 33202/96, § 100, ECHR 2000-I, and *Iatridis v. Greece* [GC], no. 31107/96, § 54, ECHR 1999-II).

57. The Court further recalls that the right to any social benefit is not included as such among the rights and freedoms guaranteed by the Convention (see, for example, *Aunola v. Finland* (dec.), no. 30517/96, 15 March 2001). The right to live in a particular property not owned by the applicant does not as such constitute a "possession" within the meaning of Article 1 of Protocol No. 1 (see *H.F. v. Slovakia* (dec.), no. 54797/00, 9 December 2003; *Kovalenok v. Latvia* (dec.), no. 54264/00, 15 February 2001, and *J.L.S. v. Spain* (dec.), no. 41917/98, 27 April 1999).

58. However, pecuniary assets, such as debts, by virtue of which the applicant can claim to have at least a "legitimate expectation" of obtaining effective enjoyment of a particular pecuniary asset may also fall within the notion of "possessions" contained in Article 1 of Protocol No. 1 (see *Pine Valley Developments Ltd and Others v. Ireland*, judgment of 29 November 1991, Series A no. 222, p. 23, § 51; *Pressos Compania Naviera S.A. and Others v. Belgium*, judgment of 20 November 1995, Series A no. 332, p. 21, § 31, and, *mutatis mutandis*, *S.A. Dangeville v. France*, no. 36677/97, §§ 44-48, ECHR 2002-III). In particular, the Court has consistently held that a "claim" — even to a particular social benefit — can constitute a "possession" within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable (see *Burdov v. Russia*, cited above, § 40, and *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59).

(a) Judgment of 10 May 2000 as upheld on 22 June 2000

59. Turning to the facts of the present case, the Court notes that by virtue of the judgment of 10 May 2000 the town council was to put at the applicant's disposal a flat with certain characteristics. The judgment did not require the authorities to give him ownership of a particular flat, but rather obliged them to issue him with an occupancy voucher in respect of any flat satisfying the court-defined criteria. On the basis of the voucher, a so-called

"social tenancy agreement" would have been signed between the competent authority and the applicant, acting as the principal tenant on behalf of himself and the members of his family (see paragraph 33 above). Under the terms of a "social tenancy agreement", as established in the RSFSR Housing Code and the applicable regulations, the applicant would have had a right to possess and make use of the flat and, under certain conditions, to privatise it in accordance with the Privatisation of State Housing Act.

60. Accordingly, from the moment the judgment of 10 May 2000 was issued, the applicant has had an established "legitimate expectation" to acquire a pecuniary asset. The judgment was final as no ordinary appeal lay against it, and enforcement proceedings were instituted.

61. The Court is therefore satisfied that the applicant's claim to a "social tenancy agreement" was sufficiently established to constitute a "possession" falling within the ambit of Article 1 of Protocol No. 1 (see *Teteriny v. Russia*, no. 11931/03, §§ 45-50, 30 June 2005).

62. Similarly to its finding in paragraph 52 above, having regard to domestic courts' decisions granting the Town Council deferments (see paragraphs 23 and 24 above), the Court considers that the interference with the applicant's right to peaceful enjoyment of his possessions by a delay of a year and a half in the execution of the judgment in the circumstances was not such as to have entailed an individual and excessive burden on the applicant.

63. There has, therefore, been no violation of Article 1 of Protocol No. 1.

(b) Judgments of 12 May 1999, as clarified on 7 September 1999, 21 July 1999, as upheld on 5 October 1999, and 16 May 2000

64. The judgments of 12 May 1999, 21 July 1999 and 16 May 2000 provided the applicant with an enforceable claim and not simply a general right to receive support from the State. The judgments became final on 25 May 1999, 5 October 1999 and 27 May 2000 respectively. It follows that the impossibility for the applicant to have those judgments enforced for the periods of more than a year and four months, two years and ten months and two years and two months, accordingly, constituted an interference with his right to peaceful enjoyment of his possessions, as set forth in the first sentence of the first paragraph of Article 1 of Protocol No. 1.

65. Not having found any justification for such an interference (see paragraph 54 above), the Court concludes that there has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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

67. In so far as the judgments of 12 May 1999, 21 July 1999 and 16 May 2000 are concerned, the applicant claims 50,000 euros (EUR) by way of compensation for non-pecuniary damage.

68. The Government considered that should the Court find a violation in this case that would in itself constitute sufficient just satisfaction. They also contended that in any event the applicant's claim was excessive and if the Court decided to make an award it should comply with the amount awarded by the Court in the *Burdov v. Russi*a case.

69. The Court considers that the applicant must have suffered certain distress and frustration resulting from the State authorities' failure to enforce judgments in his favour, which cannot sufficiently be compensated by the finding of a violation. However, the amount claimed appears excessive. The Court takes into account the award it made in the case of *Burdov v. Russia* (cited above, § 47), the nature and the amounts of the awards whose non-enforcement was at issue in the present case, the delay before the enforcement and other relevant aspects. Making its assessment on an equitable basis, it 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

70. The applicant sought reimbursement of his costs and expenses incurred before domestic courts in the amount of EUR 2,000. However, he did not submit any receipts or other vouchers in support of his claim. Accordingly, the Court does not make any award under this head.

C. Default interest

71. 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. *Dismisses* the Government's preliminary objection;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention and Article 1 of Protocol N° 1 in respect of the enforcement of the judgment of 10 May 2000 as upheld on 22 June 2000;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol N° 1 in respect of the enforcement of the judgments of 12 May 1999, as clarified on 7 September 1999, 21 July 1999, as upheld on 5 October 1999, and 16 May 2000;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable on that amount;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

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

Søren NIELSEN
Registrar

Christos ROZAKIS
President