



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

FIFTH SECTION

CASE OF ZUBKO AND OTHERS v. UKRAINE

(Applications nos. 3955/04, 5622/04, 8538/04 and 11418/04)

JUDGMENT

STRASBOURG

26 April 2006

FINAL

26/07/2006

This version was rectified on 3 October 2006 under Rule 81 of the Rules of the Court.

In the case of Zubko and Others v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOUCHAROVA,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr J. BORREGO BORREGO, *judges*,

and Ms C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 3 April 2006,

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

PROCEDURE

1. The case originated in four applications (nos. 3955/04, 5622/04, 8538/04 and 11418/04) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Ukrainian nationals, Mr Kostyantyn Antonovych Zubko, Ms Iryna Sergiyivna¹ Oleksiyenko, Mr Oleksandr Ivanovych Yankul and Mr Petro Mykolayovych Remez (“the applicants”), on 2 and 5 January, 12 February and 3 March 2004 respectively.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Ms Zoryana Bortnovska, who was succeeded by Ms Valeriya Lutkovska, Deputy Minister of Justice.

3. On 9 September 2004 the Court decided to communicate the applications to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the applications at the same time as their admissibility.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASES**

4. The first applicant was born in 1954, the second applicant in 1971 and the fourth applicant in 1963. The first, second and fourth applicants are

1. Rectified on 3 October 2006. The patronymic name of the applicant read Fedorovna in the former version of the judgment.

judges who live in Kirovograd. The third applicant, a retired judge, was born in 1942 and currently lives in Gayvoron in the Kirovograd region.

A. The first applicant (Mr Zubko)

5. In November 2002 the first applicant lodged complaints with the Pechersky District Court of Kyiv (“the Pechersky District Court”) against the Ministry of Finance and the State Treasury, seeking payment of salary arrears, life-term judicial benefits and compensation for delays in their payment.

6. On 16 December 2002 the district court allowed the applicant's claims. It ordered the Ministry of Finance and the State Treasury to pay the applicant 5,807.26 Ukrainian hryvnas¹ (UAH) in compensation.

7. On 9 July 2003 the Kyiv City Court of Appeal (“the Court of Appeal”) upheld this judgment and it became final.

8. On 11 August 2003 the Pechersky District Bailiffs' Service (“the PBS”) decided not to initiate enforcement proceedings in the case and informed the applicant that he should lodge the execution writs with the State Treasury.

9. On 22 September 2003 the State Treasury declined to enforce the judgment owing to a lack of budgetary funds, and stated that responsibility for enforcement lay with the State Judicial Administration.

10. On 6 November 2004 the applicant received the sum due to him under the judgment of 16 December 2002 (payment order no. 163). (The enforcement proceedings lasted from July 2003 to November 2004, that is, for about one year and four months.)

B. The second applicant (Ms Oleksiyenko)

11. In November 2002 the applicant lodged complaints with the Pechersky District Court against the Ministry of Finance and the State Treasury, seeking payment of salary arrears, life-term judicial benefits and compensation for delays in their payment.

12. On 16 December 2002 the district court allowed the applicant's claims. It ordered the Ministry of Finance and the State Treasury to pay the applicant UAH 10,291.61² in compensation.

13. On 9 July 2003 the Court of Appeal upheld this judgment and it became final.

14. On 11 August 2003 the PBS decided not to initiate enforcement proceedings in the case and informed the applicant that she should lodge the execution writs with the State Treasury.

1. 1,099.75 euros (EUR).

2. EUR 1,948.97.

15. On 5 February 2004 the State Treasury returned the writs of execution in respect of the judgment of 16 December 2002, which remained unenforced owing to a lack of funds in the State budget.

16. On 15 November 2004 the applicant received the sum due to her (payment order no. 173). (The enforcement proceedings lasted from July 2003 to November 2004, that is, for about one year and four months.)

C. The third applicant (Mr Yankul)

17. On 22 March 2000 the third applicant retired, following a decision of the Verkhovna Rada to dismiss him.

18. In November 2001 the applicant lodged complaints with the Pechersky District Court against the Ministry of Finance and the State Treasury, seeking payment of salary arrears, life-term judicial benefits and compensation for delays in their payment.

19. On 14 January 2002 the Pechersky District Court allowed the applicant's claims. It ordered the Ministry of Finance and the State Treasury to pay the applicant UAH 4,822¹ in compensation.

20. On 8 May 2002 the Court of Appeal upheld this judgment and it became final.

21. On 21 May 2003 the State Treasury declined to enforce the judgment owing to a lack of budgetary funds.

22. On 8 September 2003 the Kyiv City Department of Justice informed the applicant that the judgment could not be enforced owing to a lack of funds in the State budget for such expenditure.

23. On 8 September 2003 the Deputy Head of the State Judicial Administration informed the applicant that the judicial administration was not liable for payment of debts that had been incurred before it had been established.

24. On 22 December 2003 the PBS returned the writ of execution to the applicant on the ground that there were no funds in the budget of the State Treasury for the enforcement of such judgments.

25. On 6 November 2004 the applicant received the sum awarded to him by the judgment of 14 January 2002 (payment order no. 163).

26. On 30 November 2004 the applicant received the sum due to him in the form of a payment order (no. 3698) to his bank account). (The enforcement proceedings lasted from May 2002 to November 2004, that is, for about two years and six months.)

1. EUR 1,016.67.

D. The fourth applicant (Mr Remez)

27. In November 2002 the fourth applicant lodged complaints with the Pechersky District Court against the Ministry of Finance and the State Treasury, seeking payment of salary arrears, life-term judicial benefits and compensation for delays in their payment.

28. On 16 December 2002 the district court allowed the applicant's claims. It ordered the Ministry of Finance and the State Treasury to pay the applicant UAH 5,978.34¹ in compensation.

29. On 9 July 2003 the Court of Appeal upheld this judgment and it became final.

30. On 11 August 2003 the PBS decided not to initiate enforcement proceedings in the case and informed the applicant that he should lodge the writs with the State Treasury.

31. In October 2003 the applicant lodged the writs of execution with the State Treasury. On 10 November 2003 the State Treasury declined to enforce the judgment owing to a lack of budgetary funds, and stated that responsibility for enforcement lay with the State Judicial Administration.

32. On 6 November 2004 the applicant received the sum due to him (payment order no. 163). (The enforcement proceedings lasted from July 2003 to November 2004, that is, for about one year and four months.)

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND PRACTICE

A. The Constitution of Ukraine

33. The relevant provisions of the Constitution of Ukraine read as follows:

Article 95

“All expenditure by the State for social purposes, and the amounts and aims thereof, shall be determined by the State Budget Act.”

Article 43

“Everyone shall have the right to work, including the possibility to earn his or her living by labour which he or she freely chooses or to which he or she freely agrees.

... The right to timely payment for work shall be protected by law.”

1. EUR 1,132.14.

Article 126

“The independence and immunity of judges shall be guaranteed by the Constitution and the laws of Ukraine.

... Influencing judges in any manner shall be prohibited.”

Article 127

“Justice shall be administered by professional judges and, in cases determined by law, by lay assessors and jurors.

Professional judges shall not belong to political parties or trade unions, take part in any political activity, hold a representative mandate, occupy any other paid position or perform other remunerated work except in the academic, teaching and creative spheres. ...”

Article 129

“In the administration of justice, judges shall be independent and subject only to the law.”

Article 130

“The State shall ensure the funding and proper conditions for the operation of the courts and the activity of judges. Expenditure for the maintenance of the courts shall be allocated separately in the State budget of Ukraine. ...”

B. The Judiciary Act of 1 June 2002

34. Section 123 of the Judiciary Act provides that judges' salaries and social-security benefits shall be such as to ensure their financial independence and shall be determined in accordance with the Status of Judges Act. The amount of a judicial salary cannot be reduced.

C. The Budgetary Code of 21 June 2001

35. The relevant provisions of the Budgetary Code read as follows (Law no. 2542):

Article 7

“... Budgetary funds shall be spent for the purposes determined by budgetary allocations only...”

Article 23

“...Budget commitments can be undertaken and payments from the State budget made only in so far as budgetary allocations exist for these purposes.”

D. The 2003 State Budget Act (Law no. 380-IV of 26 December 2002)

36. The State Budget Act provides that the writing-off of funds from the State budget pursuant to a court judgment delivered in favour of the employees of an organisation in receipt of budgetary funds, who are entitled to certain benefits, shall be carried out from the single treasury account of the State Treasury at the expense and within the limits of the budget allocations fixed for financing that organisation.

E. Law no. 1801-IV of 17 June 2004 amending the 2004 State Budget Act

37. The State budget provided UAH 1,067,200¹ for the enforcement of judgments awarding judicial salaries and benefit arrears.

F. Law amending the Enforcement Proceedings Act (Law no. 606-XIV of 21 April 1999)

38. Section 20-1 of the Law provides that the bailiffs' departments of the Ministry of Justice shall be responsible for the enforcement of judgments concerning the debts of the executive branch of Government.

G. Regulations on the State Judicial Administration (Presidential Decree No. 182 of 3 March 2003)

39. The Decree provides that the State Judicial Administration shall be responsible for organising the financial planning and accounting of the courts and for preparing an estimate of the courts' budgetary needs.

H. Regulations on the State Treasury (as approved by Resolution no. 590 of the Cabinet of Ministers of 31 July 1995)

40. In accordance with section 4 of the Regulations, the State Treasury is responsible for the implementation of the State budget and for monitoring its expenditure.

1. EUR 171,783.

I. Recommendation of the Committee of Ministers R (94) 12 on the Independence, Efficiency and Role of Judges (adopted by the Committee of Ministers on 13 October 1994 at the 518th meeting of the Ministers' Deputies), and the Explanatory Memorandum thereto

41. The relevant extracts from the Recommendation read as follows:

“Principle III - Proper working conditions

1. Proper conditions should be provided to enable judges to work efficiently and, in particular, by:

...

b. ensuring that the status and remuneration of judges is commensurate with the dignity of their profession and burden of responsibilities; ...”

42. The relevant extracts from the Explanatory Memorandum read as follows:

“29. Status and remuneration are important factors determining appropriate working conditions (see paragraph 1.b). The status accorded to judges should be commensurate with the dignity of their profession and their remuneration should represent sufficient compensation for their burden of responsibilities. These factors are essential to the independence of judges, especially the recognition of the importance of their role as judges, expressed in terms of due respect and adequate financial remuneration.

30. Paragraph 1.b is closely bound up with the reference in Principle I to all decisions concerning the professional life of judges, which obviously includes their status and their remuneration.”

J. European Charter on the Statute for Judges (Department of Legal Affairs of the Council of Europe Document (98)23)

43. The relevant extracts from Chapter 6 of the European Charter on the Statute for Judges, “Remuneration and Social Welfare”, read as follows:

“6.1. Judges exercising judicial functions in a professional capacity are entitled to remuneration, the level of which is fixed so as to shield them from pressures aimed at influencing their decisions and more generally their behaviour within their jurisdiction, thereby impairing their independence and impartiality.”

THE LAW

I. JOINDER OF THE APPLICATIONS

44. The Court considers that the applications should be joined in accordance with Rule 42 § 1 of the Rules of Court, given their common factual and legal background.

II. ADMISSIBILITY

A. The applicants' complaints

45. The first, second and fourth applicants complained about the lengthy non-enforcement of the judgments of the Pechersky District Court of Kyiv of 16 December 2002. The third applicant complained about the lengthy non-enforcement of the judgment of the Pechersky District Court of Kyiv of 14 January 2002. In their submissions they relied on Article 6 § 1 of the Convention, which reads as follows:

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

46. The applicants further complained that the State had infringed their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1, which provides:

“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.”

47. The second applicant complained that she had had no effective remedy in respect of her complaints under Article 6 § 1 of the Convention concerning the length of non-enforcement of the judgment given in her favour, in breach of Article 13, which reads as follows:

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

B. The Government's preliminary objections in respect of all the applications as to the exhaustion of domestic remedies and admissibility *ratione personae*

48. The Government alleged that the applicants had failed to exhaust domestic remedies, as they had not lodged applications with the domestic courts challenging the inactivity of the State Treasury and the State Judicial Administration or claiming compensation for improper enforcement proceedings or for the devaluation of the amounts awarded. They further alleged that, as the judgments had been enforced, the applicants were no longer victims of the violation claimed.

49. The applicants contested these arguments.

50. The Court notes that it has considered and rejected the Government's similar objections on a number of occasions (see *Romashov v. Ukraine*, no. 67534/01, §§ 27 and 32, 27 July 2004). The Court finds no reason to depart from its previous case-law, and accordingly dismisses these objections.

C. Applicability of Article 6 § 1 to the complaints lodged by the first, second and fourth applicants concerning non-enforcement of the final judgments of 16 December 2002

51. The Government submitted that Article 6 § 1 of the Convention was not applicable to the enforcement proceedings involving the first, second and fourth applicants, since it did not apply to disputes between public officials and the State. They further contended that the dispute concerned issues of public law and did not fall within the scope of civil rights and obligations.

52. The applicants disagreed.

53. The Court notes that the judiciary, while not being part of the ordinary civil service, is nonetheless part of the public service. A judge has specific responsibilities in the field of the administration of justice, a sphere in which States exercise sovereign powers. Consequently, the judge participates directly in the exercise of powers conferred by public law and performs duties designed to safeguard the general interests of the State (see *Pitkevich v. Russia* (dec.), no. 47936/99, 8 February 2001).

54. The Court further reiterates that disputes between administrative authorities and employees who occupy posts involving participation in the exercise of powers conferred by public law do not attract the guarantees of Article 6 § 1 (see *Pellegrin v. France* [GC], no. 28541/95, §§ 64-67, ECHR 1999-VIII). In these circumstances, the Court considers that Article 6 of the Convention is not applicable in the instant case to the dispute over the payment of arrears in judicial benefits between the applicants concerned, who are serving judges, and the Ukrainian State. Accordingly, Article 6 § 1

of the Convention does not apply to the cases brought by the first, second and fourth applicants.

55. It follows that this part of the applicants' complaints is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

D. Admissibility of the complaint under Article 6 § 1 of the Convention in relation to the third applicant

56. The Court notes that the parties raised no objection as to the applicability of Article 6 § 1 of the Convention in relation to the enforcement of a judgment given in favour of a retired judge. Nevertheless, the Court reiterates its reasoning in previous, similar cases against Ukraine, where it found that Article 6 § 1 under its civil head was applicable to the judicial proceedings between a retired civil servant and his or her former employer when a dispute concerned outstanding financial obligations after retirement (see *Svintitskiy and Others v. Ukraine* (dec.), no. 59312/00, 18 January 2005).

57. Accordingly, the Court finds that Article 6 § 1 applies to the complaint concerning non-enforcement of the final judgment in the third applicant's favour. No other reason for declaring it inadmissible has been established.

E. Admissibility of the complaints brought by all the applicants under Article 1 of Protocol No. 1 to the Convention

58. For the reasons set forth above concerning Article 6 § 1 of the Convention (paragraphs 48-50), the Court dismisses the Government's objection that this part of the application is inadmissible on grounds of non-exhaustion of domestic remedies and lack of victim status. Furthermore, it notes that the Government did not raise any other objections to the admissibility of the applicants' complaints under Article 1 of Protocol No. 1. Consequently, the Court finds that these complaints are not manifestly ill-founded or indeed inadmissible on any other ground cited in Article 35 of the Convention. They must therefore be declared admissible.

F. Admissibility of the complaint brought by the second applicant under Article 13 of the Convention

59. As to the applicant's complaint under Article 13 of the Convention in respect of the alleged breach of Article 6 § 1, the Court, having already found that Article 6 § 1 of the Convention does not apply in the present case (see paragraphs 51-55 above), reaches the same conclusion with respect to Article 13 (see *Balmer-Schafroth and Others v. Switzerland*, judgment of

26 August 1997, *Reports of Judgments and Decisions* 1997-IV, § 42). It follows that the second applicant's complaint under Article 13 of the Convention in respect of the alleged breach of Article 6 § 1 is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3, and must be rejected in accordance with Article 35 § 4.

III. MERITS

A. Alleged violation of Article 6 § 1 of the Convention in the third applicant's case

60. The Government contended that the delay in enforcement of the judgment given in the third applicant's favour had been due to the complexity of the enforcement proceedings, the lack of funds in the State budget and the technical errors committed by the domestic courts. (In particular, they mentioned that the defendant cited in the execution writs had been incorrect, that is to say, it should have been the State Treasury Department and not the Ministry of Finance.)

61. The applicant disagreed.

62. The Court notes that the non-payment of the judgment debt was due to the failure of the State to make provision for the appropriate expenditure in the State budget. However, by failing for two years and six months to take the necessary steps to comply with the final judicial decision in the present case, the Ukrainian authorities deprived the provisions of Article 6 § 1 of much of their useful effect (see *Shmalko v. Ukraine*, no. 60750/00, §§ 43-47, 20 July 2004). Accordingly, the Court concludes that there has been a violation of Article 6 § 1 of the Convention.

B. Alleged violation of Article 1 of Protocol No. 1 to the Convention in all the present applications

1. Submissions of the parties

63. The Government in their submissions disputed the assertion that the awards made by the domestic courts to the applicants constituted possessions within the meaning of Article 1 of Protocol No. 1, as they concerned payments for judicial benefits provided by the State. They further alleged that the claims in respect of the arrears granted did not even amount to legitimate expectations, as they had been directed against the wrong institution – the Ministry of Finance instead of the State Judicial Administration. The Government further referred to the difficult financial situation of the State (see *Raimondo v. Italy*, judgment of 22 February 1994,

Series A no. 281-A, §§ 27 and 30) and the technical complications encountered in the course of the enforcement proceedings. Moreover, they contended that the State had taken active steps to solve the problem, as it had made a budgetary allocation of UAH 1,067,200¹ for the payment of the various arrears. They further asserted that these judgments had been enforced in full and without undue delay, and that accordingly there had been no infringement of Article 1 of Protocol No. 1 to the Convention.

64. The applicants submitted that the State had been liable for the outstanding debts due to them and that, having failed to pay those debts for a long time, the State had deprived them of the actual possession of their property, in violation of Article 1 of Protocol No. 1.

2. The Court's assessment

65. The Court draws attention to its case-law to the effect that the impossibility for an applicant to obtain execution of a judgment in his or her favour constitutes interference with the right to the peaceful enjoyment of his or her possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see, among other judgments, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III, and *Jasiūnienė v. Lithuania*, no. 41510/98, § 45, 6 March 2003).

66. The Court observes that the interference with the applicants' rights was justified partly by reference to complications concerning the allocation of funds for judicial benefits and the enforcement of the related judgments using funds from the State budget. These complications also related in part to reforms in the Ukrainian judicial system and to the introduction of changes in the system of administering the finances of the judiciary, with the subsequent transfer of these functions from the Ministry of Justice to the State Judicial Administration.

67. In the Court's opinion, the complications referred to by the Government undeniably involved a legitimate public interest, but prevented a fair balance from being struck between the State's interests and those of the applicants, who, moreover, were responsible for the exercise of important public functions in the administration of justice. In particular, the Court observes that the litigation at issue concerned compensation for the authorities' failure between 1995 and 2001 to comply with their legislative obligation to provide the applicants with the judicial benefits envisaged by the Constitution and the Judiciary Act (see paragraphs 33-34 above). The Court considers, therefore, that the applicants' situation, and in particular their sensitive status as independent judicial officers, required that the authorities enforce the judgments and earmark the necessary funds to that end without delay.

1. EUR 171,783.

68. In particular, in the Court's view, the failure of the State to provide judicial benefits to judges in a timely manner is incompatible with the need to ensure their ability to exercise their judicial functions independently and impartially, in order to be shielded from outside pressures aimed at influencing their decisions and behaviour (see paragraph 43 above). In this connection the Court refers to the relevant legal instruments of the Council of Europe, such as the Recommendation of the Committee of Ministers on the Independence, Efficiency and Role of Judges and the European Charter on the Statute for Judges, which clearly stress the importance of these factors (see paragraphs 41-42 above).

69. The Court is of the opinion that the failure to ensure adequate and timely payment of the remuneration of domestic court judges, and the uncertainty in which they were left, upset the fair balance that has to be struck between the demands of the public interest and the need to protect the applicants' right to the peaceful enjoyment of their possessions. Consequently, by failing to comply with the judgments given in favour of the applicants, the national authorities for a considerable period prevented them from receiving in full the judicial benefits to which they were entitled by law, a circumstance liable to impede the exercise of their judicial functions with the necessary dedication.

70. The Court is therefore of the opinion that the impossibility for the applicants to obtain the enforcement of the judgments in their favour for a period of one year and four months (in the case of the first, second and fourth applicants) and two years and six months (in the case of the third applicant), breached their right to the peaceful enjoyment of their possessions within the meaning of the first paragraph of Article 1 of Protocol No. 1.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. 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, costs and expenses

72. The first, third and fourth applicant each claimed EUR 10,000 in respect of non-pecuniary damage. The second applicant claimed EUR 15,000 in compensation for non-pecuniary damage. They made no claims as to pecuniary damage or costs and expenses.

73. The Government argued that the claims were unsubstantiated and the amounts claimed exorbitant.

74. The Court takes the view that the applicants may be considered to have suffered some non-pecuniary damage as a result of the serious violations found, which cannot be compensated by the Court's finding of a violation alone. Making its assessment on an equitable basis, as required by Article 41 of the Convention, and taking into account the special circumstance of the applicants' important judicial status, the Court considers it reasonable to award the first, second and fourth applicants the sum of EUR 3,000 each for non-pecuniary damage. It also awards the third applicant EUR 5,000 under this head.

B. Default interest

75. 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. *Decides* to join the applications;
2. *Declares* admissible the complaints of all the applicants with regard to the alleged violation of Article 1 of Protocol No. 1 to the Convention, as well as the third applicant's complaint concerning the alleged infringement of Article 6 § 1 of the Convention, and declares the remainder of the applications inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the third applicant (application no. 8538/04);
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention in respect of all four applicants;
5. *Holds*
 - (a) that the respondent State is to pay the first, second and fourth applicants, 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) each in respect of non-pecuniary damage, plus any tax that may be chargeable;

- (b) that the respondent State is to pay the third applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
- (c) that the above amounts shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
- (d) 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;

6. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 26 April 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President