



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

FOURTH SECTION

CASE OF ZARB v. MALTA

(Application no. 16631/04)

JUDGMENT

STRASBOURG

4 July 2006

FINAL

04/10/2006

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 Zarb v. Malta,

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

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr M. PELLONPÄÄ,
Mr K. TRAJA,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 13 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 16631/04) against the Republic of Malta lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Maltese national, Mr Nazzareno Zarb (“the applicant”), on 5 April 2004.

2. The applicant was represented by Mr C. Soler and by Mr C. Cardona, lawyers practising in Birkirkara (Malta). The Maltese Government (“the Government”) were represented by their Agent, Mr S. Camilleri, Attorney General.

3. On 27 September 2005 the Court (Fourth Section) declared the application partly inadmissible and decided to communicate the complaints concerning the length of the proceedings and the lack of remedies in that respect to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1971 and is currently detained at Corradino prison (Malta).

A. The criminal proceedings against the applicant

5. On 5 April 1991 the applicant, accused together with other persons of various counts of aggravated theft (including theft in various factories and car theft), was arraigned before the Court of Magistrates sitting as a Court of Criminal Inquiry.

6. The prosecution concluded the case on the merits on 12 October 1993. It produced further evidence on charges of recidivism on 14 January 1994.

7. The legal qualification of the charges was presented on 14 April 1994, on which date the Court of Magistrates started to hear the evidence for the defence.

8. In a judgment of 15 February 1995, the Court of Magistrates acquitted the applicant of two of the charges, namely receiving stolen goods and theft of a car. It found the applicant guilty of the remaining six charges of theft and sentenced him to four years' imprisonment.

9. The applicant appealed against his conviction and sentence. Four of his co-accused appealed, challenging exclusively the reasonableness of their sentence.

10. The defendants introduced a number of requests for release on bail, for the examination of new witnesses and for leave to present further submissions. This led to the adjournment of the case on several occasions, in particular on 29 February 1996 and on 13 March 1997, dates scheduled for the delivery of the judgment. The examination of the case was suspended from 14 January until 8 October 1999 because the presiding judge was ill.

11. The delivery of the judgment was scheduled first for 9 January, then for 30 October 2001; however, the proceedings were adjourned as some of the accused wished to present further submissions and because the presiding judge had been assigned to a foreign tribunal. By an order of 3 October 2002 the Court of Criminal Appeal adjourned the proceedings *sine die* awaiting the outcome of the constitutional claim which the applicant had introduced in the meantime (see *infra*, under B. "The applicant's constitutional claim").

12. The proceedings were resumed after the determination of the applicant's constitutional claim, and on 15 January 2004 the Court of Appeal gave its final judgment. It reaffirmed that its role was not to interfere with the first court's appreciation of the evidence, as long as it was satisfied that the conclusions reached by the Court of Magistrates were lawful and reasonable. In the light of the material before it and having regard to the fact that the applicant had admitted his guilt, the Court of Criminal Appeal confirmed the first-instance judgment.

B. The applicant's constitutional claim

1. Before the Civil Court

13. In the meantime, on 5 April 2002 the applicant had filed a constitutional claim with the Civil Court (First Hall). Invoking Article 6 of the Convention and Article 39 of the Constitution of Malta, he complained about the length of the criminal proceedings and alleged that his trial had not been fair.

14. In a judgment of 15 May 2003, the Civil Court dismissed the applicant's claim.

15. The Civil Court observed that no delay could be imputed to the prosecution or to the trial court. The case was a rather complex one, as it involved many counts and a number of accused persons. Moreover, the Court of Magistrates had to hear several witnesses and to obtain many documents. Notwithstanding this, most of the requests for bail were decided on 17 April 1991, which was only twelve days after the date of the arraignment. Some of the accused failed to appear at several hearings, thus obliging the trial court to adjourn the proceedings. There were also difficulties in controlling the various accused, as their behaviour during the hearings had obstructed the normal course of justice. As some of them did not respect the bail conditions, the police had to take action for the revocation of bail and the Court of Magistrates had to decide on this issue. Some witnesses were untraceable and others, albeit properly summoned, did not attend the sittings. There had been no excessive delay in the inquiries and it had to be taken into account that it was necessary to exhibit the record of the inquiry for every single charge. The prosecution had concluded the case within a reasonable time and the proceedings before the Court of Magistrates were conducted without any unnecessary delay.

16. As to the proceedings before the Court of Criminal Appeal, they were prolonged because of the great number of claims presented by the defence and the need to obtain several reports from prison officials and/or psychiatric experts on the behaviour of the defendants, with a view to considering the progress they had made while in prison. Apart from the period between 14 January and 8 October 1999, the case was never left dormant.

17. Therefore, notwithstanding the fact that the case had been pending for about eleven years, there had been no substantial delay. It was true that most of the delay had been caused by the requests of other accused and not of the applicant himself. However, the Court of Criminal Appeal considered that, the crimes being connected, it would not have been consonant with the proper administration of justice to separate the defendants' respective situations.

2. Before the Constitutional Court

18. On 27 May 2003 the applicant appealed against the Civil Court's judgment to the Constitutional Court.

19. In a judgment of 31 October 2003, the latter quashed the impugned judgment in so far as it concerned the applicant's complaint relating to the length of the criminal proceedings and declared that there had been a breach of the "reasonable time" principle. It also ordered the Attorney General to pay the applicant 100 Maltese liras (Lm – approximately 240 Euros) as just satisfaction. It held that each party had to bear its own costs. The Constitutional Court confirmed the Civil Court's judgment for the remainder.

20. The Constitutional Court considered that there had been some delay at the appeal stage. The case was not particularly complex as the appeals concerned almost exclusively the measure of the penalty. Notwithstanding this, the case remained undecided for almost six years and six months and in November 2001 it was eventually referred to a new presiding magistrate. Even if it was true that the defendants presented a number of claims which had the effect of slowing down the proceedings, the Court of Criminal Appeal had the duty to ensure that the duration of the trial was not excessive. As most of these claims had been introduced by the other defendants, and not by the applicant himself, there had been a violation of the "reasonable time" principle in respect of the latter.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

21. The applicant's complaint relates to the length of the criminal proceedings brought against him. He invoked Article 6 § 1 of the Convention which, in so far as relevant, reads as follows:

"In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by a ... tribunal..."

A. Admissibility

1. The Government's objection concerning the lack of "victim status"

22. The Government argued that the applicant could not claim to be a "victim", within the meaning of Article 34 of the Convention, of the facts complained of. They observed that the Constitutional Court had indeed

acknowledged a violation of the “reasonable time” principle and granted the applicant Lm 100 in compensation for moral damage, thus providing adequate redress for the breach of the Convention.

23. The applicant submitted that he had undeniably suffered a violation of Article 6 of the Convention and that the award of Lm100 for a human rights violation causing a considerable amount of hardship was far from adequate.

24. The Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a “victim” unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, for example, *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, p. 32, §§ 69 et seq.; *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; and *Jensen v. Denmark* (dec.), no. 48470/99, 20 September 2001, ECHR 2001-X).

25. The issue as to whether a person may still claim to be the victim of an alleged violation of the Convention essentially entails on the part of the Court an *ex post facto* examination of his or her situation. As it has already held in other length-of-proceedings cases, the question whether he or she has received reparation for the damage caused – comparable to just satisfaction as provided for under Article 41 of the Convention – is an important issue. Regarding violations of the reasonable-time requirement, one of the characteristics of sufficient redress which may remove a litigant’s victim status relates to the amount awarded as a result of using the domestic remedy. The Court has already had occasion to indicate that an applicant’s victim status may depend on the level of compensation awarded at domestic level on the basis of the facts about which he or she complains before the Court (*Scordino v. Italy (No. 1)*, no. 36813/97, §§ 181 and 202, 29 March 2006).

26. In the case of *Scordino v. Italy (No. 1)*, the Grand Chamber held that when, in order to prevent or to put right violations of the “reasonable time” principle, Contracting States choose to introduce remedies of a compensatory nature, it might be easier for the domestic courts to refer to the amounts awarded at domestic level for other types of damage – personal injury, damage relating to a relative’s death or damage in defamation cases for example – and rely on their innermost conviction, even if that results in awards of amounts that are lower than those fixed by the Court in similar cases. However, the Court is required to verify whether the way in which the domestic law is interpreted and applied has produced consequences that are consistent with the principles of the Convention, as interpreted in the light of the Court’s case-law. It recalls that, especially for States that have effectively incorporated the Convention into their legal systems, a clear error in assessment on the part of the domestic courts may also arise as a

result of a misapplication or misinterpretation of the Court's case-law (*Scordino*, cited above, §§ 182-192).

27. In the present case, it is not disputed that the Constitutional Court has found a violation of Article 6 § 1 of the Convention by reason of the excessive length of the criminal proceedings complained of. There has therefore been acknowledgment, at the domestic level, of the violation of the applicant's rights. It remains to be ascertained whether the redress granted can be considered appropriate and sufficient.

28. According to the Court's case-law, there is a strong but rebuttable presumption that excessively long proceedings will occasion non-pecuniary damage. It is acceptable, however, that, in some cases, the length of proceedings may result in only minimal non-pecuniary damage or no non-pecuniary damage at all. The domestic courts will then have to justify their decision by giving sufficient reasons. Moreover, when no remedy designed to expedite the proceedings is provided for by the domestic legal system, which only affords the possibility of obtaining a financial compensation, the threshold in respect of which the amount will still allow a litigant to claim to be a "victim" will be higher (*Scordino*, cited above, §§ 204-206).

29. In the instant case, the Constitutional Court awarded the applicant Lm 100 (approximately EUR 240) for an overall length of more than twelve years and nine months for two instances. It found that there had been some delay at the appeal stage. Thus, the Constitutional Court applied a rate of less than EUR 19 per annum. The Court observes that this amount is approximately 1.7 % of what it generally awards in similar Italian cases (see, for instance and *mutatis mutandis*, *Maurano v. Italy*, no. 43350/98, § 32, 26 April 2001). That factor in itself leads to a result that is manifestly unreasonable having regard to its case-law. It will revert to this matter in the context of Article 41 (see paragraph 56-57 below).

30. In conclusion, the Court considers that the redress was insufficient. As the second condition – appropriate and sufficient redress – has not been fulfilled, the Court considers that the applicant can in the instant case still claim to be "victim" of a breach of the "reasonable-time" requirement.

31. Accordingly, the Government's objection concerning the lack of "victim status" should be dismissed.

2. Other grounds for declaring this complaint inadmissible

The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

32. The applicant submitted that his case was by no means complex, as it did not involve any complicated issue of fact or of law. He was of the opinion that the overall length of the trial could have been reduced by separating the proceedings against him from those of his co-accused. This should have been done particularly when it became evident that the applicant was being prejudiced by the irregular behaviour, requests and applications of the other co-accused. He emphasised that he had filed the least number of requests throughout the entire proceedings.

33. The Government acknowledged that the findings of the Constitutional Court of Malta were correct and that there had been a breach of Article 6 § 1 of the Convention.

34. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

35. In the present case, the period to be taken into consideration began on 5 April 1991, when the applicant was arraigned before the Court of Magistrates, and ended on 15 January 2004, the date of the Court of Appeal's judgment. The proceedings at issue thus lasted twelve years, nine months and ten days for two levels of jurisdiction.

36. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

37. The Court observes that the applicant's case was not particularly complex. This is even more evident with regard to the appeal proceedings, in which, as the Constitutional Court pointed out, the main issue was the measure of the penalty (see paragraph 20 above). Even though the parties had not identified any particular period of inactivity at the first-instance stage, the Court notes that the proceedings before the Court of Magistrates lasted three years, nine months and ten days (from 5 April 1991 until 15 February 1995 – see paragraphs 5-8 above). As to the appeal proceedings, they lasted more than eight years and ten months, a period which is excessive. Moreover, the case was adjourned on several occasions: to examine the co-accused's requests, because the presiding judge was ill; and because he had been assigned to a foreign tribunal. The delivery of the judgment was also postponed on at least one occasion (see paragraphs 10 and 11 above). As rightly acknowledged by the Constitutional Court, these facts entailed a substantial period of inactivity, for which no convincing explanation had been given by the Government.

38. The Court recalls that in the present case the Constitutional Court found that a reasonable time had been exceeded. However, the fact that the constitutional proceedings, examined as a whole, did not cause the applicant to lose his “victim” status constitutes an aggravating circumstance regarding a breach of Article 6 § 1 for exceeding a reasonable time (see, *mutatis mutandis*, *Scordino*, cited above, § 225). The Court will therefore revert to this issue under Article 41.

39. Having examined all the material submitted to it, and having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

40. There has accordingly been a breach of Article 6 § 1

II. ALLEGED VIOLATION OF ARTICLE 13 READ IN CONJUNCTION WITH ARTICLE 6 § 1 OF THE CONVENTION

41. Invoking Article 13 of the Convention, taken in conjunction with Article 6 § 1, the applicant alleged that the violation of the “reasonable time” principle found in his case was not redressed in an effective manner, as the Constitutional Court granted him only Lm 100 as just satisfaction. Article 13 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.”

42. The Government contested that argument.

A. Admissibility

1. *The Government’s objection of failure to exhaust domestic remedies*

43. The Government submitted that the applicant, who invoked a violation of Article 6 § 1 before the domestic courts, had never raised an issue under Article 13 in the context of his constitutional complaint. In the Government’s view, this amounted to non-exhaustion of domestic remedies.

44. The applicant alleged that all domestic remedies had been exhausted. He observed that before the Civil Court in its constitutional jurisdiction he had requested a declaration of a violation of the reasonable time requirement and the grant of adequate compensation.

45. The Court does not consider it necessary to examine whether the applicant has exhausted all available domestic remedies and consequently leaves this matter open.

2. *Other grounds for declaring this complaint inadmissible*

46. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

47. The Court observes firstly, that Article 13 of the Convention guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland*, [GC], no. 30210/96, § 156, ECHR 2000-XI).

48. The Court has frequently held that the remedy required by Article 13 must be “effective” in practice as well as in law (see, for example, *İlhan v. Turkey* [GC], no. 22277/93, § 97, ECHR 2000-VII). The term “effective” is also considered to mean that the remedy must be adequate and accessible (see *Paulino Tomás v. Portugal* (dec.), no. 58698/00, ECHR 2003-XIII). Remedies available to a litigant at domestic level for raising a complaint about the length of proceedings are “effective” within the meaning of Article 13 of the Convention if they prevent the alleged violation or its continuation, or provide adequate redress for any violation that has already occurred (see *Mifsud v. France* (dec.) [GC], no. 57220/00, § 17, ECHR 2002-VIII, *Scordino v. Italy* (no. 1), cited above, §§ 186-188, and *Surmeli v. Germany* [GC], no. 75529/01, § 99, 8 June 2006). Lastly, the Court recalls that the effectiveness of a remedy within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant (see *Surmeli v. Germany*, cited above, § 98) and the mere fact that an applicant’s claim fails is not in itself sufficient to render the remedy ineffective (*Amann v. Switzerland*, [GC], no. 27798/95, §§ 88-89, ECHR 2002-II).

49. The Court must determine whether the means available to the applicant in Maltese law for raising a complaint about the length of the proceedings in his case could be considered “effective”.

50. The Court notes that a remedy was in principle provided under Maltese law, which enabled the applicant to raise with the national courts his complaint about the length of the proceedings in his case. He instituted constitutional proceedings before the Civil Court (First Hall) in its constitutional jurisdiction and, on appeal, before the Constitutional Court. His complaint under Article 13 mainly related to the amount of the compensation awarded by the Constitutional Court, a question which the Court has addressed in its examination of the Government’s objection of lack of victim status (see paragraphs 24-31 above).

51. The Court observes that there existed no limit on the amount of compensation which could be granted to an applicant in such proceedings. The amount awarded to the applicant was based solely on the exercise by the domestic court judges' of their discretion as to what might constitute appropriate pecuniary redress in the circumstances of the applicant's own case. The mere fact that the amount of compensation given was low does not render the remedy in itself ineffective. Furthermore, no other evidence has been provided showing that the remedy at issue could be considered ineffective. In the light of the foregoing, the Court considers that the above mentioned situation cannot be regarded as a breach of the applicant's right to an effective remedy.

52. Accordingly, there has been no violation of Article 13 of the Convention in the present case.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

54. The applicant alleged that due to the delay in the proceedings, he was unable to run his business and to obtain the related profits. He claimed Lm 35,000 (approximately EUR 84,000) for pecuniary damage.

55. The applicant further claimed Lm 5,000 (EUR 12,000) for moral damage.

56. The Government submitted that there was no causal link between the violation found and the amount claimed for pecuniary damage. They observed that there was no evidence that the applicant was in any lawful employment immediately before the commencement of the proceedings at issue. Moreover, it was unlikely that, as alleged by the applicant, his business had increased while he was in prison serving another sentence unconnected with the proceedings complained of.

57. As to non-pecuniary damage, the Government pointed out that the period spent by the applicant in detention on remand had been deducted from his final sentence. Furthermore, for most of the period in question the applicant was in detention under preventive arrest or serving sentences in connection with other proceedings.

58. The Court observes that there is no causal link between the pecuniary damage claimed by the applicant and the violation found in the present case. Therefore it makes no award under this head.

59. On the other hand the Court considers that the applicant suffered moral damage. However, at the domestic level the applicant had already obtained Lm 100 in this respect. In the case of *Scordino v. Italy (No. 1)* (see judgment quoted above, §§ 268-269) the Grand Chamber has stressed that the amount to be awarded for non-pecuniary damage under Article 41 may be less than that indicated in its case-law where the applicant has already obtained a finding of a violation at domestic level and compensation by using a domestic remedy. However, where an applicant can still claim to be a “victim” after exhausting that domestic remedy he or she must be awarded the difference between the amount obtained from the national jurisdictions and an amount that would not have been regarded as manifestly unreasonable compared with the amount awarded by the Court if it had been awarded at the domestic level.

60. Having regard to the circumstances of the present case (see paragraph 37 above), the Court considers that, in the absence of domestic remedies, it would have awarded the sum of EUR 10,300. It notes that the applicant was awarded EUR 240 by the Constitutional Court, which is approximately 2.3 % of what the Court would have awarded. In the Court’s view, this factor in itself leads to a result which is manifestly unreasonable having regard to the criteria established in its case-law.

61. Having regard to the characteristics of the domestic remedy chosen by Malta and the fact that, notwithstanding this national remedy, the Court has found a violation, it considers, ruling on an equitable basis, that the applicant should be awarded EUR 4,500, plus any tax that may be chargeable on that amount.

B. Costs and expenses

62. The applicant claimed a total sum of Lm 2,000 (approximately EUR 4,800) for the costs incurred before the domestic jurisdictions. He also sought Lm 500 (approximately EUR 1,200) for the costs incurred before the Court.

63. The Government submitted that the amount claimed for the domestic proceedings was manifestly excessive. They recalled that the Constitutional Court had decided that each party should bear its own costs. The applicant’s claim was unclear and the applicant had failed to produce receipts or invoices in this respect.

64. As to the costs before the Court, the Government accepted that the amount claimed was reasonable.

65. 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. It is true that the applicant failed to produce receipts or other documents showing the exact amount incurred before the domestic jurisdictions. It is nevertheless to be noted that before introducing his application in Strasbourg, the applicant had exhausted the available national remedies, submitting a constitutional complaint to the Civil Court and the Constitutional Court. Even though this remedy did not pertain exclusively to the violation of the “reasonable time” principle, the Court accepts that the applicant had incurred expenses at the domestic level in order to correct the breach of the Convention (see, *mutatis mutandis*, *Rojas Morales v. Italy*, no. 39676/98, § 42, 16 November 2000). Having regard to the elements in its possession and to its practice in this area, the Court awards, EUR 500 under this head. The Court also considers that the amount claimed for the costs incurred before it is reasonable. It therefore awards the applicant the sum claimed in this respect (EUR 1,200).

66. It follows that the total sum due to the applicant for costs and expenses is EUR 1,700, plus any tax that may be chargeable on that amount.

C. Default interest

67. 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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been no violation of Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Maltese Liri at the rate applicable at the date of settlement:
 - (i) EUR 4,500 (four thousand five hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 1,700 (one thousand seven hundred euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 4 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinions of Mr Bonello is annexed to this judgment.

N.B.
T.L.E.

CONCURRING OPINION OF JUDGE G. BONELLO

1. I voted to award the applicant only EUR 4500 in respect of non-pecuniary damages, solely in deference to the criteria recently established by the Grand Chamber of the Court in the cases of *Scordino* and *Cocchiarella v. Italy* (29 March 2006) in which deliberations I did not participate and with whose conclusions I respectfully disagree.

2. According to its long-established criteria, the Court would have awarded the applicant EUR 10,300 had his case been decided in Strasbourg. Instead of applying the Strasbourg scale of compensation, the domestic courts fobbed the applicant off with EUR 240 – which represents a beggarly 2.3% of what the Strasbourg Court would have awarded (see § 60).

3. For having complied with the Convention's requirement of exhausting domestic remedies before applying to the Strasbourg Court, the applicant now finds himself penalized by getting only about 45% of what would have been due to him according to the Court's practice. The argument (used in *Scordino* and *Cocchiarella*) that the sum obtainable in Strasbourg should anyway be curtailed because the applicant enjoyed the convenience of a domestic remedy, in the present case falls flat on its face. The so-called domestic 'remedy' worked out at only 2.3% of what he was entitled to, and the so-called 'convenience' consisted in having to undergo the burden of three sets of court proceedings instead of one.