



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

FOURTH SECTION

CASE OF CABALA v. POLAND

(Application no. 23042/02)

JUDGMENT

STRASBOURG

8 August 2006

FINAL

08/11/2006

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 Cabala v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 4 July 2006,

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

PROCEDURE

1. The case originated in an application (no. 23042/02) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Mr Krzysztof Cabała (“the applicant”), on 6 June 2002.

2. The Polish Government were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 16 September 2005 the President of the Fourth Section of the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

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

4. The applicant was born in 1951 and lives in Siemianowice Śląskie, Poland.

A. The criminal proceedings

5. On 21 August 2001 the applicant was arrested by the police on suspicion of having stabbed a certain A.T. during a quarrel and being under the influence of alcohol.

6. On 23 August 2001 the Katowice District Court (*Sąd Rejonowy*) decided to detain the applicant on remand on the basis of a reasonable suspicion that he had attempted to commit a homicide. The court also considered that given the severity of the penalty that could be expected, it was probable that the applicant would interfere with the course of proceedings. At the same time, the court rejected the prosecutor's assertion that there was also a risk of collusion.

7. On 12 November 2001 the District Court further prolonged the detention, referring in particular to the fact that the investigation had not yet ended.

8. On 8 February 2002 the applicant was indicted before the Katowice Regional Court (*Sąd Okręgowy*).

9. The applicant's pre-trial detention was subsequently prolonged on 18 February and 5 August 2002 and on 5 January 2003. The trial court justified its decisions by reference to the high probability that the applicant had committed the offence and the gravity of the charges, which might attract a heavy sentence.

10. On 14 April 2003 the Katowice Regional Court further prolonged the applicant's detention relying, in addition to the previous grounds, on the fact that the trial court had not yet completed the taking of evidence.

11. The applicant's numerous applications for release and appeals against decisions concerning prolongation of his detention were to no avail.

12. On 23 May 2003 the trial court gave judgment. The court convicted the applicant as charged finding that, given his state of mind at the time of events, he could not be held fully responsible for his actions. The Regional Court sentenced the applicant to six years' imprisonment.

13. On 11 December 2003 the Katowice Court of Appeal gave judgment which it quashed the Regional Court's judgment and remitted the case.

14. The applicant's pre-trial detention was not lifted. The trial court prolonged it on 16 January, 10 May and 13 September 2004 relying on the same grounds as before: the reasonable suspicion against the applicant, the gravity of the charges and the risk that given the severity of the expected penalty the applicant would obstruct the proceedings.

15. On 29 September 2004 the Katowice Regional Court gave judgment. The court considered that the applicant had overstepped the limits of legitimate self-defence and sentenced him to 5 years' imprisonment.

16. On 27 January 2005 the Katowice Court of Appeal upheld the judgment. It appears that the applicant did not lodge a cassation appeal and that this judgment became final.

B. The monitoring of the applicant's correspondence

17. On 27 November 2004 the applicant sent a letter to the Court. The envelope in which the letter was delivered bears the following stamp: Katowice Court of Appeal (*Sąd Apelacyjny Katowice*), a handwritten note: censorship, 29 December 2004 (*cenzura, 29.12.04*) and an illegible signature. The envelope bears signs of having been opened after being sealed: its left side has been cut open and then resealed with sellotape. It appears that the envelope was stamped with the Court of Appeal's stamp described above after being resealed with sellotape.

II. RELEVANT DOMESTIC LAW

A. Preventive measures, including detention on remand

18. The Code of Criminal Procedure of 1997, which entered into force on 1 September 1998, defines detention on remand as one of the so-called "preventive measures" (*środki zapobiegawcze*). The other measures are bail (*poręczenie majątkowe*), police supervision (*dozór policji*), guarantee by a responsible person (*poręczenie osoby godnej zaufania*), guarantee by a social entity (*poręczenie społeczne*), temporary ban on engaging in a given activity (*zawieszenie oskarżonego w określonej działalności*) and prohibition on leaving the country (*zakaz opuszczania kraju*).

Article 249 § 1 sets out the general grounds for imposition of the preventive measures. That provision reads:

"Preventive measures may be imposed in order to ensure the proper conduct of proceedings and, exceptionally, also in order to prevent an accused committing another serious offence; they may be imposed only if evidence gathered shows a significant probability that an accused has committed an offence."

19. Article 258 lists grounds for detention on remand. It provides, in so far as relevant:

"1. Detention on remand may be imposed if:

(1) there is a reasonable risk that an accused will abscond or go into hiding, in particular when his identity cannot be established or when he has no permanent abode [in Poland];

(2) there is a justified fear that an accused will attempt to induce [witnesses or co-defendants] to give false testimony or to obstruct the proper course of proceedings by any other unlawful means;

2. If an accused has been charged with a serious offence or an offence for the commission of which he may be liable to a statutory maximum sentence of at least 8 years' imprisonment, or if a court of first instance has sentenced him to at least

3 years' imprisonment, the need to continue detention to ensure the proper conduct of proceedings may be based on the likelihood that a severe penalty will be imposed."

20. The Code sets out the margin of discretion as to the continuation of a specific preventive measure. Article 257 reads, in so far as relevant:

"1. Detention on remand shall not be imposed if another preventive measure is sufficient."

Article 259, in its relevant part, reads:

"1. If there are no special reasons to the contrary, detention on remand shall be lifted, in particular if depriving an accused of his liberty would:

- (1) seriously jeopardise his life or health; or
- (2) entail excessively harsh consequences for the accused or his family."

The 1997 Code not only sets out maximum statutory time-limits for detention on remand but also, in Article 252 § 2, lays down that the relevant court – within those time-limits – must in each detention decision determine the exact time for which detention shall continue.

21. Article 263 sets out time-limits for detention. In the version applicable up to 20 July 2000 it provided:

"1. Imposing detention in the course of an investigation, the court shall determine its term for a period not exceeding 3 months.

2. If, due to the particular circumstances of the case, an investigation cannot be terminated within the term referred to in paragraph 1, the court of first instance competent to deal with the case may – if need be and on the application made by the [relevant] prosecutor – prolong detention for a period [or periods] which as a whole may not exceed 12 months.

3. The whole period of detention on remand until the date on which the first conviction at first instance is imposed may not exceed 2 years.

4. Only the Supreme Court may, on application made by the court before which the case is pending or, at the investigation stage, on application made by the Prosecutor General, prolong detention on remand for a further fixed period exceeding the periods referred to in paragraphs 2 and 3, when it is necessary in connection with a stay of the proceedings, a prolonged psychiatric observation of the accused, a prolonged preparation of an expert report, when evidence needs to be obtained in a particularly complex case or from abroad, when the accused has deliberately prolonged the proceedings, as well as on account of other significant obstacles that could not be overcome."

On 20 July 2000 paragraph 4 was amended and since then the competence to prolong detention beyond the time-limits set out in paragraphs 2 and 3 has been vested in the court of appeal within whose jurisdiction the offence in question has been committed.

B. Censorship of correspondence

1. *The Code of Execution of Criminal Sentences 1997*

22. Rules relating to means of controlling correspondence of persons involved in criminal proceedings are set out in the Code of Execution of Criminal Sentences (*Kodeks karny wykonawczy*) (“the 1997 Code”) which entered into force on 1 September 1998.

23. The relevant part of Article 103 § 1 of the Code provides as follows:

“Convicts (...) have a right to lodge complaints with institutions established by international treaties ratified by the Republic of Poland concerning the protection of human rights. Correspondence in those cases (...) shall be sent to the addressee without delay and shall not be censored.”

24. Article 214 § 1 reads as follows:

“Unless exceptions are provided for in the present Chapter, a detainee shall enjoy at least the same rights as are secured to a convicted person serving a sentence of imprisonment under the ordinary regime in a closed prison. No restrictions shall be applied to him except such as are necessary to secure the proper conduct of criminal proceedings, to maintain order and security in a remand centre and to prevent demoralisation of detainees.”

25. Article 217 § 1 reads, in so far as relevant, as follows:

“(...) detainee’s correspondence shall be censored by [the authority at whose disposal he remains], unless the authority decides otherwise.”

Article 242 § 5 reads as follows:

“The prohibition of censorship shall also mean the prohibition of acquainting oneself with the content of the letter.”

2. *The Rules of Detention on Remand 1998*

26. On 1 September 1998 the Rules of Detention on Remand (*Rozporządzenie Ministra Sprawiedliwości w sprawie regulaminu wykonywania tymczasowego aresztowania*) entered into force.

§ 36 of the Rules provides:

“The detainee’s correspondence, including the correspondence with the international institutions for the protection of human rights, which act on the basis of international agreements ratified by the Republic of Poland, with the Ombudsman and public and local government institutions, is mailed through the intermediary of the organ at whose disposal he remains.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

27. The applicant complained that the length of his detention on remand had been unreasonable. He relied on Article 5 § 3 of the Convention, which reads as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

28. The Government contested that argument. They considered that the applicant’s pre-trial detention satisfied the requirements of Article 5 § 3. It was justified on “relevant” and “sufficient” grounds. One of those grounds was the risk that the applicant might interfere with the course of proceedings. The charges laid against him carried a severe penalty.

The Government further submitted that the domestic courts acted diligently and speedily, in particular having regard to the complexity of the case.

A. Admissibility

29. 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

1. Period to be taken into consideration

30. The Court notes that the applicant was detained on remand on 21 August 2001 and the first-instance judgment in his case was given on 23 May 2003. Subsequently, on 11 December 2003, that judgment was quashed by the Court of Appeal and the applicant remained in detention until 29 September 2004 when the trial court gave a judgment. Consequently, the period to be taken into consideration lasted 2 years, 6 months and 20 days.

2. *The reasonableness of the length of detention*

(a) Principles established under the Court's case-law

31. Under the Court's case-law, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see, among other authorities, *W. v. Switzerland*, judgment of 26 January 1993, Series A no. 254-A, p. 15, § 30, and *Kudła v. Poland* [GC], no. 30210/96, § 110, ECHR 2000-XI). The Convention case-law has developed four basic acceptable reasons for refusing bail: the risk that the accused will fail to appear for trial; the risk that the accused, if released, would take action to prejudice the administration of justice or commit further offences or cause public disorder (see *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 59, ECHR 2003-IX (extracts)). The danger of absconding cannot be gauged solely on the basis of the severity of the possible sentence; it must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify pre-trial detention. In this context regard must be had in particular to the character of the person involved, his morals, his assets, his links with the State in which he is being prosecuted and his international contacts (see *W. v. Switzerland*, judgment of 26 January 1993, Series A no. 254-A, § 33 with further references, and *Smirnova*, cited above, § 60).

32. It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions dismissing the applications for release. It is essentially on the basis of the reasons given in these decisions and of the true facts mentioned by the applicant in his appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention.

33. The persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where

such grounds were “relevant” and “sufficient”, the Court must also ascertain whether the competent national authorities displayed “special diligence” in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, § 153, ECHR 2000-IV, and *Jablonski v. Poland*, no. 33492/96, § 80, 21 December 2000).

(b) Application of the principles to the circumstances of the present case

34. The Court observes that in the present case the authorities relied on the reasonable suspicion that the applicant had committed the offences with which he had been charged and on the severity of the sentence that might be imposed. They repeated those grounds in all their decisions. The authorities failed to advance any other justifications to prolong the applicant’s detention; moreover, on one occasion the domestic court dismissed as groundless the prosecutor’s allegation that the applicant might obstruct the proceedings (see paragraph 6 above).

35. The Court accepts that the suspicion against the applicant of having committed the offences and the need to secure the proper conduct of the proceedings might initially justify his detention. However, with the passage of time, these grounds became less relevant and cannot justify the entire period of 2 years and over 6 months during which the most serious preventive measure against the applicant had been imposed (see *Malik v. Poland*, no. 57477/00, § 45, 4 April 2006).

Moreover, the authorities relied heavily on the likelihood that a severe sentence would be imposed on the applicant given the serious nature of the offences at issue. In this respect, the Court agrees that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending. However, the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of detention on remand (see *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001).

36. The Court observes further that the applicant was detained on charges of attempted homicide and was convicted of having overstepped the limits of legitimate self-defence. The applicant acted without accomplices. It does not appear therefore that his case presented particular difficulties for the investigation authorities and for the courts to determine the facts and mount a case against the perpetrator as would undoubtedly have been the case had the proceedings concerned organised crime (see *Celejewski v. Poland*, no. 17584/04, § 37, 4 May 2006; *Dudek v. Poland*, no. 633/03, § 36, 4 May 2006).

37. The Court also notes that there is no specific indication that during the entire period in question the authorities envisaged the possibility of imposing other preventive measures on the applicant, such as bail or police supervision.

In this context the Court would emphasise that “other preventive measures” are expressly foreseen by Polish law to secure the proper conduct of criminal proceedings (see paragraphs 19 and 21 above) and that under Article 5 § 3 the authorities, when deciding whether a person should be released or detained, are obliged to consider alternative measures for ensuring his appearance at the trial. Indeed, that Article lays down not only the right to “trial within a reasonable time or release pending trial” but also provides that “release may be conditioned by guarantees to appear for trial” (see *Jablonski*, cited above, § 83).

38. In the circumstances, the Court concludes that the grounds given by the domestic authorities were not “relevant” and “sufficient” to justify the applicant’s being kept in detention for almost 2 years and over 6 months.

There has therefore been a violation of Article 5 § 3 of the Convention.

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

39. The applicant complained that the criminal proceedings against him were unfair and since he had acted in self-defence he should have been acquitted. He relied on Article 6 of the Convention, which is so far as relevant provides as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

40. The Court notes that it is not clear whether the applicant lodged a cassation appeal with the Supreme Court. However, even assuming that the applicant exhausted domestic remedies, the Court reiterates that it is not called upon to deal with errors of fact and law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

41. The Court observes that he does not allege any particular failure to respect his right to a fair hearing. Assessing the criminal proceedings against the applicant as a whole, it finds no indication that they were unfairly conducted.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

42. The Court considered it appropriate to raise *ex officio* the issue of Poland’s compliance with Article 8 of the Convention on account of the monitoring of the applicant’s correspondence. This Article, in its relevant part, reads:

“1. Everyone has the right to respect for his ... correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

43. The Government refrained from expressing their opinion on the admissibility and merits of the complaint under Article 8.

A. Admissibility

44. 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

1. Principles established under the Court's case-law

45. The Court recalls that any “interference by a public authority” with the right to respect for correspondence will contravene Article 8 of the Convention unless it is “in accordance with the law”, pursues one or more of the legitimate aims referred to in paragraph 2 of that Article and is “necessary in a democratic society” in order to achieve them (see, among many other authorities, *Silver and Others v. the United Kingdom*, 25 March 1983, Series A no. 61, p. 32, § 84; *Campbell v. the United Kingdom*, 25 March 1992, Series A no. 233, p. 16, § 34 and *Niedbala v. Poland* no. 27915/95, § 78).

46. As to the expression “in accordance with the law”, the Court has established three fundamental principles. The first one is that the interference in question must have some basis in domestic law. The second principle is that “the law must be adequately accessible”, a person must be able to have an indication that is adequate, in the circumstances, of the legal rules applicable to his case. The third principle is that “a norm cannot be regarded as a ‘law’ unless it is formulated with sufficient precision to enable a person to regulate his conduct; he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail” (see *Silver*, cited above, §§ 86-88).

47. It is of utmost importance for the effective operation of the system of individual application instituted by Article 34 that the applicants should be able to communicate freely with the Court without being subjected to any

form of pressure from the authorities to withdraw or modify their complaints. In this context, “pressure” includes not only direct coercion and flagrant acts of intimidation, but also other improper indirect acts or contacts designed to dissuade or discourage applicants from using a Convention remedy (see *Aydın v. Turkey*, judgment of 25 September 1997, *Reports of Judgments and Decisions* 1997-VI, §§ 115-117). The interception of letters by prison authorities can also hinder applicants in bringing their cases to the Court (see *Klyakhin v. Russia*, no. 46082/99, § 119, 30 November 2004).

48. It is important to respect the confidentiality of correspondence with the Court since it may concern allegations against prison authorities or prison officials. The opening of letters both to and from the Convention organs undoubtedly gives rise to the possibility that they will be read and may conceivably, on occasion, also create the risk of reprisals by prison staff against the prisoner concerned (see *Campbell*, cited above, p. 22, § 62). No compelling reasons have been found to exist for monitoring or delaying an applicant’s correspondence with the Court (see *Campbell*, cited above, §§ 48 and 62; and *Peers v. Greece*, no. 28524/95, § 84, ECHR 2001-III and *Drozdowski v. Poland*, no. 20841/02, §§ 27-31, 6 December 2005).

2. Application of the principles to the circumstances of the present case

(a) Existence of an interference

49. The Court notes the envelope in which the applicant’s letter of 27 November 2004 was delivered to the Court bears the following stamp: Katowice Court of Appeal (*Sąd Apelacyjny Katowice*), a handwritten note: censorship, 29 December 2004 (*cenzura, 29.12.04*) and an illegible signature. Moreover, the envelope was apparently open after having been sealed. The left side of the envelope had been cut open, stamped by the Court of Appeal and then resealed with sellotape (see paragraph 17 above).

The Court considers that, even if there is no separate stamp on the letter as such, there is a reasonable likelihood that the envelope was opened by the domestic authorities. The Court has held on many occasions that as long as the Polish authorities continue the practice of marking the detainees’ letters with the *ocenzurowano* stamp, the Court has no alternative but to presume that those letters have been opened and their contents read (see *Matwiejczuk v. Poland*, no. 37641/97, § 99, 2 December 2003 and *Pisk-Piskowski v. Poland*, no. 92/03, § 26, 14 June 2005, *Micha v. Poland*, no. 13425/02, § 58, 4 May 2006).

It follows that there was an “interference” with the applicant’s right to respect for his correspondence under Article 8.

(b) Whether the interference was “in accordance with the law”

50. The Government did not indicate a concrete legal basis in the domestic law for the impugned interference. The Court notes that the interference took place in November 2004 when the applicant had been convicted by the first-instance judgment and he remained in detention pending appeal.

It further observes that, according to Article 214 of the Code of Execution of Criminal Sentences, persons detained on remand should enjoy the same rights as those convicted by a final judgment. Accordingly, the prohibition of censorship of correspondence with the European Court of Human Rights contained in Article 103 of the 1997 Code, which expressly relates to convicted persons, was also applicable to detained persons (see *Michtha v. Poland*, no. 13425/02, § 61, 4 May 2006, *Kwiek v. Poland*, no. 51895/99, § 44, 30 May 2006). Thus, censorship of the applicant’s letter to the Court’s Registry was contrary to the domestic law.

It follows that the interference in the present case was not “in accordance with the law”.

51. Having regard to that finding, the Court does not consider it necessary to ascertain whether the other requirements of paragraph 2 of Article 8 were complied with. Consequently, the Court finds that there has been a violation of Article 8 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicant claimed 10,000 Polish zlotys (PLN) in respect of pecuniary damage and PLN 2,000,000 in respect of non-pecuniary damage.

54. The Government submitted that these claims were exorbitant and unnecessarily incurred.

55. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant 2,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

56. The applicant submitted no claim in respect of costs and expenses.

C. Default interest

57. 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 complaints concerning the length of the applicant's pre-trial detention and the monitoring of his correspondence admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds* that there has been a violation of Article 8 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, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Polish zlotys at the rate applicable at the date of settlement;
 - (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 8 August 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President