



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

FIFTH SECTION

CASE OF GRÄSSER v. GERMANY

(Application no. 66491/01)

JUDGMENT

STRASBOURG

5 October 2006

FINAL

26/03/2007

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 Gräßer v. Germany,

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

Mr P. LORENZEN, *President*,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER,

Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 6 May 2003, on 16 September 2004 and on 11 September 2006,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 66491/01) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a German national, Mr Jürgen Gräßer (“the applicant”), on 2 February 2001.

2. The applicant was initially represented by Mr B. Sauber, a lawyer practising in Saarbrücken, Germany. He was then represented by Mr A. Keller and Mr D. Sauer, lawyers of the law firm Keller, Rainer & Kollegen practising in Heidelberg, Germany. He was then again represented by Mr B. Sauber. The respondent Government were represented by their Agent, Mr K. Stoltenberg, *Ministerialdirigent*, and, subsequently, Mrs A. Wittling-Vogel, *Ministerialdirigentin*, of the Federal Ministry of Justice.

3. The applicant, invoking Article 6 of the Convention, alleged that the length of the official liability proceedings he had brought against the city of Saarbrücken exceeded a reasonable time.

4. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 16 September 2004 the Court declared the application partly admissible.

6. The applicant and the Government each filed further written observations (Rule 59 § 1). The parties replied in writing to each other's observations.

7. On 1 April 2006 this case was assigned to the newly composed Fifth Section (Rule 25 § 1 and Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1940 and lives in Nonnweiler, Germany.

A. Background to the case

9. In 1971, the applicant and a company engaged in negotiations with the city of Saarbrücken to obtain a building permit for a plot of land they had bought. In the course of these negotiations, the applicant and the said company undertook to pay 2,535,000 Deutschmarks (DEM) (approximately 1,296,000 Euros (EUR)) of the costs for the provision of the public infrastructure (*Erschließung*). The applicant also undertook to construct a shopping centre within two years following the grant of the building permit.

10. On 1 April 1974 the applicant applied for the building permit with the municipal authorities. He offered to submit a bank security to cover the costs for the provision of the public infrastructure concerning the shopping centre, estimated to amount to some DEM 1,500,000. He also suggested that a contract on this point be signed by him and the city.

11. In August 1974, following municipal elections, the city requested the applicant to submit a bank security of DEM 4,500,000 (approximately EUR 2,300,813) to cover the costs for the provision of the public infrastructure for the plot of land as a whole. Upon his refusal to do this, the city refused its consent to his request for a building permit. It also refused to conclude a contract concerning the construction of the shopping centre and the costs for the provision of the public infrastructure.

B. First trial of the applicant's case

12. On 23 August 1974 the applicant brought an official liability action (*Amtshaftungsklage*) for compensation in the Saarbrücken Regional Court against the city of Saarbrücken. He complained that the city's sudden decision to request a bank security of DEM 4,500,000, thereby setting up further inequitable conditions for its agreement to the applicant's building

project, was a result of informal negotiations between different local political parties before the municipal elections. It constituted a voluntary breach of the principle of continuity in administrative actions.

13. On 24 February 1975 the local building authorities refused to grant the applicant the requested building permit. This decision was later confirmed by the administrative courts.

14. On 21 March 1975 the Saarbrücken Regional Court dismissed the applicant's official liability action. According to the Regional Court, nothing suggested that the city of Saarbrücken had acted in breach of its obligations as a public organ.

15. On 27 June 1975 the applicant lodged an appeal against this decision with the Saarbrücken Court of Appeal (Fourth Senate).

16. In autumn 1976 the applicant's real estate concerned was sold by compulsory auction.

17. On 3 February 1978 the Saarbrücken Court of Appeal (Fourth Senate) dismissed the applicant's appeal as ill-founded.

18. On 7 February 1980, following the applicant's appeal on points of law, the Federal Court of Justice quashed this decision and remitted the case to the Court of Appeal (Fourth Senate). It requested the Court of Appeal to examine whether the city had discontinued abruptly the contractual negotiations with the applicant for arbitrary reasons, because the city was liable to pay damages to the applicant if it had done so.

C. First retrial of the applicant's case

19. On 23 October 1981 the Saarbrücken Court of Appeal (Fourth Senate) again dismissed the applicant's appeal. It found that, even assuming that the city had breached its duty as a public organ to act in a consistent manner, the applicant had failed to establish that there was a causal link between the city's conduct and the damage sustained by him.

20. On 14 October 1982 the Federal Court of Justice decided partly to admit the applicant's renewed appeal on points of law.

21. On 5 May 1983 the Federal Court of Justice partly quashed the Court of Appeal's decision and remitted the case to the Seventh Senate of that court. It found that the Court of Appeal, in its finding that a causal link was missing between the city's conduct and the damage sustained by the applicant, erroneously did not assess the evidence offered by him.

D. Second retrial of the applicant's case

22. On 10 July 1984 the Saarbrücken Court of Appeal (Seventh Senate) amended the Regional Court's decision of 21 March 1975. It declared that the applicant was entitled to compensation, but did not yet assess the exact amount of the damages payable (*Grundurteil*). The Court of Appeal found

that the city of Saarbrücken had unforeseeably and without legitimate reasons requested the applicant to submit a bank security of DEM 4,500,000, thereby willingly causing the breakdown of the negotiations about the grant of a building permit. Therefore, it breached its duty as a public organ to act in a consistent manner.

23. On 11 July 1985 the Federal Court of Justice refused to admit the appeal on points of law lodged by the city of Saarbrücken.

24. On 19 December 1985 the Federal Constitutional Court refused to admit the city's constitutional complaint.

25. On 8 July 1986 the Saarbrücken Court of Appeal ordered the city of Saarbrücken to pay DEM 5,798,142 (approximately EUR 2.964.543) plus interest to the applicant and dismissed the remainder of his claim.

26. On 22 June 1989, following both parties' appeals on points of law, the Federal Court of Justice quashed the Court of Appeal's decision as far as the amount of damages was concerned and remitted the case to the Court of Appeal.

E. Third retrial of the applicant's case

27. On 9 January 1995 the Court of Appeal (renamed Saarland Court of Appeal) ordered that an expert report be prepared on the amount of damages sustained by the applicant.

28. On 12 January 1999 the Court of Appeal ordered that a further expert report be prepared on the amount of damages sustained by the applicant, taking into consideration additional tax-related aspects.

29. On 20 July 2000 the Federal Constitutional Court allowed the applicant's constitutional complaint about the length of the official liability proceedings (see in detail paragraphs 36-37 below).

30. On 25 and 26 September 2000, two different Senates of the Court of Appeal rejected the applicant's challenges of the judges of the Court of Appeal on grounds of bias as ill-founded.

31. On 20 November 2001 the Saarland Court of Appeal (Seventh Senate), after having held a hearing, dismissed the applicant's action for compensation. It found that it was not established that the applicant would have been in a financial position to realise his building project if he had been granted the building permit, regardless of the city's behaviour. The city's actions thus had not caused any financial losses to him. The court ordered the applicant to pay the costs of the court proceedings (amounting to some EUR 2,512,222).

32. On 24 April 2003 the Federal Court of Justice refused to admit the applicant's appeal on points of law against the Saarland Court of Appeal's judgment of 20 November 2001. It fixed the value in dispute (*Streitwert*) at some EUR 109,000,000 and ordered the applicant, being the party failing in

his action, to bear the costs of the proceedings (amounting to another approximately EUR 657,322).

33. On 28 May 2003 the applicant lodged a constitutional complaint with the Federal Constitutional Court, claiming that his property rights, his rights to be heard, to a fair trial and to a decision by the judge having jurisdiction (*gesetzlicher Richter*) had been violated.

34. On 28 July 2003 (decision served on 4 August 2003) the Federal Constitutional Court refused to admit the applicant's constitutional complaint. It found that he failed sufficiently to substantiate his complaint, which therefore was inadmissible.

35. On 24 February 2004 the Saarbrücken District Court decided to start insolvency proceedings against the applicant.

F. Proceedings concerning the length of the official liability proceedings

36. On 24 February 2000 the applicant lodged a constitutional complaint with the Federal Constitutional Court, arguing that his right to a hearing within a reasonable time had been violated in the official liability proceedings pending in the Saarland Court of Appeal.

37. On 20 July 2000 the Federal Constitutional Court held that the applicant's right to an effective judicial remedy under the Basic Law had been violated in that the Saarland Court of Appeal did not render a decision on the amount of compensation to be granted to the applicant within a reasonable time. In its reasoning, it found that, despite the complexity of the case, the length of the proceedings, which had been pending since 1974, was obviously excessive. It concluded that, pursuant to Section 95 para. 1 of the Federal Constitutional Court Act (*Bundesverfassungsgerichtsgesetz*), it was restricted to the finding of a violation of the Basic Law. The Court of Appeal was now obliged to take effective measures in order to terminate the proceedings as soon as possible.

38. On 24 April 2001 the applicant brought another official liability action under Article 34 of the Basic Law taken in conjunction with Section 839 of the Civil Code against the *Land* Saarland with the Karlsruhe Regional Court. He applied for a declaration (*Feststellungsklage*) that the *Land* Saarland was liable to compensate him for the damage which has been and will be caused by the excessive length of the proceedings before the Saarland Court of Appeal.

39. On 9 November 2001 the Karlsruhe Regional Court allowed the applicant's action and ordered the defendant *Land* to pay the costs of the proceedings.

40. On 20 December 2001 the *Land* Saarland lodged an appeal against the judgment of the Karlsruhe Regional Court of 9 November 2001 with the Karlsruhe Court of Appeal. The proceedings, which had been suspended on

the motion of both parties awaiting the outcome of the official liability proceedings against the city of Saarbrücken, are to date still pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

41. A detailed survey of the relevant provisions of the Federal Constitutional Court Act, the provisions governing State liability and the case-law of the domestic courts concerning the length of civil proceedings can be found in the Court's judgment in the case of *Sürmeli v. Germany* ([GC], no. 75529/01, §§ 62-74, 8 June 2006).

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

42. The Court observes that in its admissibility decision in the present case the Chamber joined to the merits the Government's objection that the applicant lost his status as a “victim” within the meaning of Article 34 of the Convention. The Chamber found that this question was closely linked to that of whether there had been a violation of Article 6 § 1 of the Convention due to an excessive length of the official liability proceedings.

43. The Government maintained that the applicant lost his status as a “victim” of an alleged violation of his right under Article 6 § 1 within the meaning of Article 34 of the Convention. They pointed out that in its decision of 20 July 2000, the Federal Constitutional Court had found that the proceedings before the Saarland Court of Appeal, which had been pending since 1989, had lasted unreasonably long and had breached the applicant's Basic Law rights. Thereby, the Constitutional Court also implicitly established a violation of Article 6 of the Convention.

44. The Government further argued that a constitutional complaint was to be regarded as an effective remedy affording adequate redress for an excessive duration of civil proceedings. The Federal Constitutional Court was capable of preventing the continuation of the alleged violation of the right to be heard within a reasonable time by calling on the civil courts to take suitable measures to speed up and terminate the proceedings. Moreover, the mere finding of a violation of this right by the Federal Constitutional Court – which, admittedly, lacked the competence to award damages –, at least taken in conjunction with a fresh official liability action in the civil courts for damages sustained because of the length of the proceedings, provided the applicant with adequate redress. The applicant had indeed brought an official liability action against the *Land* Saarland for

damages sustained because of the excessive length of the proceedings, which had been successful at first instance. In any event, the applicant did not sustain any pecuniary damage by the length of the proceedings in the domestic courts.

45. The applicant contested this view. He pointed out that the Federal Constitutional Court did not explicitly find a violation of Article 6 § 1 of the Convention. Moreover, that court was not entitled to award him compensation for the damage sustained by the breach of his right to a hearing within a reasonable time.

46. 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” for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, *inter alia*, *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, p. 30, § 66; *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).

47. The Court observes that in its decision of 20 July 2000 the Federal Constitutional Court found that the applicant's right to an effective judicial remedy under the Basic Law was violated because the length of the proceedings brought by the applicant, which were pending since 1974, was clearly excessive. It accepts that thereby, that court has acknowledged in substance in a sufficiently clear way a violation of Article 6 § 1 of the Convention, irrespective of the fact that this Convention Article was not expressly referred to.

48. In assessing whether the redress afforded to the applicant by the decision of the Federal Constitutional Court granting his complaint about the duration of the proceedings was sufficient to make him lose his status as a “victim” within the meaning of Article 34, the Court refers to its findings in the case of *Sürmeli v. Germany* ([GC], no. 75529/01, 8 June 2006). In that case the Court found in relation to that applicant's complaint under Article 13 that a constitutional complaint was not capable of affording redress for the excessive length of pending civil proceedings (*ibid.*, §§ 103-108). In particular, the Federal Constitutional Court was not empowered to set deadlines, or to order specific measures to speed up the proceedings effectively (*ibid.*, §§ 105-107). This had indeed been illustrated in the present application, in which the case had been pending for another sixteen months in the Saarland Court of Appeal and had been terminated at last instance in the civil courts only some two years and nine months after the Federal Constitutional Court's decision finding that the length of the proceedings was excessive (see also *ibid.*, § 106). Moreover, the Federal Constitutional Court was not authorised to award compensation (*ibid.*, § 105). Applying the findings in the *Sürmeli* case *mutatis mutandis* to

the present question under Article 34, the Court considers that the mere finding of a violation of his basic rights by the Federal Constitutional Court did not afford redress and that, consequently, the applicant did not lose his status as a “victim” within the meaning of Article 34.

49. As to the Government's argument that the applicant had been afforded sufficient redress because he had won his official liability action in the Karlsruhe Regional Court for compensation of damage sustained because of the length of the proceedings the Court observes that these proceedings are apparently still pending in the Karlsruhe Court of Appeal. To date, no compensation has been paid to the applicant. In any event, in these proceedings the applicant would not be able to obtain compensation for non-pecuniary damage which, however, as the Court has previously observed, litigants sustain in the first place in cases concerning the length of civil proceedings (see, *inter alia*, *Hartman v. the Czech Republic*, no. 53341/99, § 68, ECHR 2003-VIII; *Sürmeli*, cited above, § 113). In these circumstances, the German authorities cannot be taken to have provided the applicant with adequate redress for the breach of his right to a hearing within a reasonable time under Article 6 § 1.

50. Accordingly, the applicant has not lost his status as a “victim” of a violation of his right under Article 6 for the purposes of Article 34 and the Government's objection in this respect must be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

51. The applicant claimed that the length of the official liability proceedings he had brought against the city of Saarbrücken had exceeded a reasonable time and that there had accordingly been a breach of Article 6 § 1 of the Convention, which, in so far as relevant, provides:

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

A. Period to be taken into consideration

52. The period to be taken into consideration in determining whether the proceedings satisfied the “reasonable time” requirement laid down in Article 6 § 1 started on 23 August 1974, when the applicant brought his official liability action against the city of Saarbrücken in the Saarbrücken Regional Court. It ended when the decision of the Federal Constitutional Court refusing to admit the applicant's constitutional complaint concerning the fairness of the proceedings was served on him, that is, on 4 August 2003. The proceedings thus lasted for approximately 28 years and eleven months, involving four levels of jurisdiction. The Court considers

this to be an inordinately lengthy period of time which would require particularly convincing grounds of justification.

B. The reasonableness of the length of the proceedings

53. The Government argued that the duration of the official liability proceedings against the city of Saarbrücken before the German courts between August 1974 and June 1989 and between July 2000 and April 2003 had not been excessive. The applicant's case had been very complex, both as regards the fact-finding, which necessitated the taking of expert evidence, and as regards the application of the law.

54. The Government submitted that the German courts had not unreasonably delayed the proceedings between August 1974 and June 1989, as they had taken eleven decisions during that period of time. Having regard to the duration of the first trial of the applicant's case (August 1974 to February 1980) until the remittal of the case by the Federal Court of Justice, its first retrial (March 1980 to May 1983) and its second retrial (June 1983 to June 1989) separately, none of the phases of the applicant's proceedings had lasted excessively long. Moreover, following the decision of the Federal Constitutional Court in July 2000 the applicant had caused considerable delays in the proceedings until July 2003, in particular by lodging several motions for bias.

55. The applicant claimed that the length of the official liability proceedings against the city of Saarbrücken as a whole, which had lasted for almost thirty years, had been excessive. He complained in particular that the courts had refused to take any measures to expedite the proceedings even though, due to the high value in dispute, his financial existence had been at stake in them.

56. The Court recalls that the reasonableness of the length of the proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and that of the competent authorities. On the latter point, the importance of what was at stake for the applicant in the litigation has to be taken into account (see, *inter alia*, *Gast and Popp v. Germany*, no. 29357/95, § 70, ECHR 2000-II; *Nuutinen v. Finland*, no. 32842/96, § 110, ECHR 2000-VIII).

57. The Court accepts that the applicant's case was quite complex. The official liability proceedings he brought necessitated, *inter alia*, findings of fact as to the city's conduct of contractual negotiations with the applicant relating to a building permit and the taking of expert evidence as regards the damages sustained by him, including his ability to finance his building project. The applicant's conduct of the proceedings, in particular the motions for bias he brought towards their end, cannot, however,

be considered to have significantly contributed to their total duration. As to the conduct of the proceedings by the German courts, the Court confines itself to noting that the overall length of the proceedings of almost 29 years alone discloses that the civil courts cannot be considered to have treated the case with the diligence required. The Court observes in this connection that the proceedings should have been terminated in a speedy manner, given that the value in dispute was finally fixed at some EUR 109,000,000 and that, therefore, the applicant's economic existence was at stake in them.

58. Therefore, the Court concludes – as has also done the Federal Constitutional Court in July 2000 – that no sufficient grounds of justification have been adduced and that the length of the applicant's proceedings was plainly excessive. There has therefore been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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.”

60. The applicant claimed compensation for pecuniary and non-pecuniary damage and the reimbursement of his costs and expenses.

A. Damage

61. The applicant, relying on documentary evidence, claimed a total of EUR 249,292,803.99 for pecuniary damage. It comprised the loss of property valued at a total of EUR 140,246,630 which had been sold by compulsory auction in order to enforce payment of the court costs imposed on him in the official liability proceedings at issue. Moreover, the applicant claimed the reimbursement of EUR 109,046,173.99 which he had lost due to the arbitrary dismissal of his official liability action. He argued that following the lapse of time he had been impeded in establishing even more clearly that he had been able to finance his building project and had therefore failed in his action.

62. The applicant further claimed EUR 29,132,472.90 for non-pecuniary damage. He argued that the excessive length of the proceedings, in which his economic existence had been at stake, had ruined his health and destroyed his reputation as a successful businessman. He stressed that following the unjustified refusal of the building permit in 1974 he had managed to set up other companies which were later valued at more than EUR 100,000,000 and which he lost some thirty years after having

instituted the proceedings at issue due to the levy of execution in order to enforce payment of the court costs whereby he became insolvent.

63. In the Government's submission, the applicant did not sustain any pecuniary damage by the length of the proceedings in the domestic courts. There was no causal link between the allegedly excessive length of the proceedings and the damage caused by the loss of his property taken in execution in order to enforce the court costs or by the – non-arbitrary – dismissal of his action.

64. The Government further argued that the amount of non-pecuniary damages claimed by the applicant was plainly excessive.

65. As to the applicant's claim for pecuniary damages, the Court notes that the applicant requests the reimbursement of the value of property lost due to the enforcement of payment of the court costs, that is, costs he had to bear because he had failed in his civil liability action. Likewise, he claims the amount of money which would have been payable to him if he had succeeded in his action. The Court is aware that a plaintiff's ability to prove his or her case may be severely impeded by such a considerable lapse of time between the impugned State action and the adjudication on a claim arising therefrom as at issue in the present case. It recalls, however, that it cannot speculate as to what the outcome of the proceedings would have been had they satisfied the requirements of Article 6 § 1 as to their length (see, *inter alia*, *Wettstein v. Switzerland*, no. 33958/96, § 53, ECHR 2000-XII; *Sürmeli*, cited above, § 144). The question whether the dismissal of the applicant's claim was well-founded concerns the fairness of the proceedings which is not the subject-matter of the present application. Consequently, there is insufficient proof of a causal connection between the excessive length of the proceedings and the alleged pecuniary damage. Accordingly, the Court cannot make an award under this head.

66. As to the applicant's claim for non-pecuniary damages, the Court observes that the applicant suffered a particularly grave violation of the right to a hearing within a reasonable time under Article 6. He undoubtedly suffered distress resulting from the protracted length of the proceedings, which he had to conduct for almost all his working life. Throughout these proceedings, his economic existence had been at stake, which is illustrated by the fact that he went bankrupt following the levy of execution to enforce payment of heavy court costs. In the light of the foregoing, in particular the excessive length of the proceedings, the Court, deciding on an equitable basis, awards the applicant EUR 45,000 in compensation for non-pecuniary damage, together with any tax that may be chargeable on that amount.

B. Costs and expenses

67. The applicant, relying on documentary evidence, claimed a total of EUR 21,900,508.81 for costs and expenses incurred in the proceedings

before the domestic courts. He argued that the official liability proceedings at issue in the German courts would have cost EUR 20,695,738.11 less if they had been terminated within eight years. In particular, the value in dispute, and consequently, the court costs and the lawyers' fees, had risen in the course of the years, not least due to the interest accrued. In addition to that, he claimed EUR 1,204,770.70 in costs for legal representation incurred in the proceedings instituted against the *Land* Saarland in the Karlsruhe Regional Court (see above at paragraphs 38-40).

68. Moreover, the applicant requested the reimbursement of his costs for legal representation incurred in the proceedings before this Court, amounting to 25 per cent of the damages awarded by the Court, that is, to up to EUR 100,000,000.

69. The Government argued with respect to the costs of the proceedings in the domestic courts that there was no causal link between the mere length of these proceedings and the damage alleged by the applicant.

70. In the Government's view, the costs allegedly incurred by the applicant in the proceedings before this Court were excessive.

71. With regard to the sums claimed in respect of the costs of the proceedings at issue in the domestic courts, the Court, having regard to the material before it, considers that it is not in a position to calculate the exact amount of additional costs accrued only because of the length of these proceedings. However, seeing that in length-of-proceedings cases the protracted examination of a case beyond a "reasonable time" involves an increase in the applicant's costs (see *Maurer v. Austria*, no. 50110/99, § 27, 17 January 2002; *Sürmeli*, cited above, § 148), the Court, having regard to the sums awarded in similar cases, awards the applicant EUR 10,000 under this head, plus any tax that may be chargeable.

72. As to the costs of legal representation in the proceedings instituted against the *Land* Saarland in the Karlsruhe Regional Court, the Court observes that these costs have been incurred to obtain redress for the violation of Article 6 of the Convention. However, the applicant succeeded in his action in these proceedings and the defendant *Land* was ordered to pay their costs. Consequently, additional costs of legal representation claimed by the applicant cannot be considered to have been reasonable as to quantum and the Court therefore does not make a further award under this head.

73. As to the costs incurred in the proceedings before this Court, the Court, having regard to its case-law and making its own assessment, awards the applicant EUR 4,000, plus any tax that may be chargeable.

C. Default interest

74. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that the applicant may claim to be a “victim” for the purposes of Article 34 of the Convention;
2. *Holds* that there has been a violation of Article 6 of the Convention;
3. *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:
 - (i) EUR 45,000 (fourty-five thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 14,000 (fourteen thousand 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President