CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF BELUKHA v. UKRAINE

(Application no. 33949/02)

JUDGMENT

STRASBOURG

9 November 2006

FINAL

09/02/2007

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 Belukha v. Ukraine,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr M. VILLIGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 16 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 33949/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mrs Zoya Nikolayevna Belukha ("the applicant"), on 19 August 2002.

2. The Ukrainian Government ("the Government") were represented by their Agent, Mr Y. Zaytsev.

3. On 15 December 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it 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 1957 and lives in the town of Artemivsk, the Donetsk region.

5. On 14 August 1997 the applicant was transferred from her position of deputy director of the Joint Stock Company "Artemivska Raiagrotekhnika" ("the Company") to the position of economist.

6. On 17 September 1997 she instituted proceedings in the Artemivsk Town Court ("the Artemivsk Court") against the Company, seeking reinstatement in the position of deputy director.

7. On 20 October 1997 the applicant was dismissed from the position of economist, as she refused to take up her new duties.

8. In November 1997 she lodged with the Artemivsk Court a new claim against the Company, seeking annulment of her dismissal, recovery of salary arrears and compensation. The new claim was joined to the initial proceedings.

9. On 27 January 1998 the applicant challenged the judge, Mr B., who was dealing with her case, and the Artemivsk Court, alleging that they lacked impartiality, as the Company had produced and installed window grids in the court's new building free of charge. On 30 January 1998 the President of that court, Mr V.L.G., rejected the applicant's motion on the grounds that it did not contain any reasons for the disqualification of the judge.

10. By letter of 16 February 1998, the President of the Artemivsk Court requested the Chairman of the Executive Board of the Company to provide the court with a computer. The letter read as follows:

> "The Artemivsk Town Court of the Donetsk Region requests you to provide a computer for the court's use."

11. The letter also contained a handwritten resolution, allowing the request.

12. On 2 March 1998 the court found in part for the applicant. It annulled the Company's order of 14 August 1997. On 20 April 1998 the Donetsk Regional Court quashed the decision of the first instance court and remitted the case for a fresh consideration.

13. On 16 December 1998 the Artemivsk Court found in part for the applicant. It ordered the Company to pay the applicant UAH 440.77[1] in salary arrears and other payments. The court further rejected the applicant's claim against her dismissal.

14. The applicant appealed in cassation. On 25 January 1999 the Donetsk Regional Court quashed the decision of 16 December 1998 concerning the pecuniary award and remitted that part for a fresh consideration.

15. On 2 April 1999 the Artemivsk Court found against the applicant. On 24 May 1999 the Donetsk Regional Court rejected the applicant's appeal in cassation.

16. On an unspecified date the President of the Donetsk Regional Court lodged a *protest* (a request for a supervisory review) with the Presidium of that court, seeking annulment of the decisions of 2 April and 24 May 1999. On 14 July 1999 the Presidium allowed the *protest*, quashed those decisions and remitted the case for a fresh consideration.

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1. Around 75 euros – "EUR".

17. On 6 September 1999 the applicant challenged the impartiality of the Artemivsk Court. On 19 October 1999 the President of the court rejected the applicant's motion as unsubstantiated.

18. On 6 March 2000 the applicant changed her claim, seeking modification of the reasons for her dismissal, recovery of salary arrears and compensation.

19. On 9 March 2000 the Artemivsk Court found in part for the applicant. It ordered that the reasons for the applicant's dismissal be changed and awarded her UAH 8,071.75[1] in salary arrears and other payments. That decision was not appealed against and became final.

20. On an unspecified date the Deputy President of the Donetsk Regional Court lodged a *protest* with the Presidium of that court, seeking annulment of the decision of 9 March 2000 as regards the pecuniary award. On 5 July 2000 the Presidium allowed the *protest*, quashed the decision of 9 March 2000 in respect of the award and remitted that part for a fresh consideration.

21. On 24 October 2000 the Artemivsk Court found in part for the applicant and ordered the Company to pay her UAH 8,689.08[2] in salary arrears and other payments. That decision was not appealed against.

22. On an unspecified date the Acting President of the Donetsk Regional Court lodged a *protest* with the Presidium of that court, seeking annulment of the decision of 24 October 2000. On 20 June 2001 the Presidium allowed the *protest*, quashed the decision of the first instance court and remitted the case for a fresh consideration.

23. On 7 September 2001 the applicant lodged with the Artemivsk Court an appeal in cassation against the decision of 20 June 2001. On 13 September 2001 the President of the Artemivsk Court rejected the applicant's appeal in cassation, as the disputed decision could not be appealed.

24. The Artemivsk Court scheduled a hearing in the case for 31 July 2001. Following the applicant's request, the hearing was postponed until 5 October 2001.

25. On 5 November 2001 the President of the court, sitting as a single judge, found against the applicant.

26. In her appeal against the decision of 5 November 2001, the applicant raised a complaint of actual bias of the President of the Artemivsk Court, alleging that the court had received certain goods due to 'unofficial' relations between the Company's management and Mr V.L.G.

27. On 21 February 2002 the Donetsk Regional Court upheld the decision of 5 November 2001. The court did not deal with the applicant's allegations of bias on the part of the President V.L.G.

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1. Around EUR 1,371.
2. Around EUR 1,475.

28. On 14 May 2002 the applicant appealed in cassation. On 19 August 2002 the Supreme Court of Ukraine refused to consider the applicant's appeal for being lodged out of time. It further held that the first instance court should have ruled on the admissibility of the applicant's appeal in cassation.

29. On 18 September 2002 the applicant requested an extension for lodging an appeal in cassation. On 19 September 2002 the Artemivsk Court granted her the extension requested, finding that the applicant had complied with the statutory time-limit for lodging her appeal in cassation.

30. On 1 October 2002 the applicant lodged with the same court her new appeal in cassation, in which she reiterated her complaint about actual bias of the President V.L.G.

31. On 21 April 2003 the panel of three judges of the Supreme Court of Ukraine, sitting in camera, rejected the applicant's request for leave to appeal in cassation, having found that there were no grounds for referring the case to the Civil Chamber of the Supreme Court.

32. According to the records provided by the Government, out of around fifty-three hearings held between September 1997 and April 2003 seven were adjourned due to the absence or at the request of the applicant. Twelve hearings were adjourned because of the absence of the representatives of the defendant company.

II. RELEVANT DOMESTIC LAW

A. Code of Civil Procedure of 1963 (“the Code”) (repealed as of 1 September 2005)

33. Article 18 of the Code provided five grounds on which a judge could be challenged and should withdraw from the case:

(a) if he participated at an earlier stage of the proceedings as a witness, expert, interpreter, representative, prosecutor, court secretary;
(b) if he was personally interested, directly or indirectly, in the outcome of the proceedings;
(c) if his relatives took part in the proceedings;
(d) if he had particular relations with the persons who took part in the proceedings; or
(e) if there were other reasons for which his impartiality could be doubted.

34. Under Articles 20-21, the persons who took part in the proceedings could lodge a motivated application for withdrawal of a judge. The application should be examined by the court hearing the case.

35. According to Article 291, the resolutions adopted by the courts concerning the applications for withdrawal of a judge could not be appealed against. The parties could, nonetheless, submit their objections against such resolutions together with their appeal against the judgment in their case.

36. Pursuant to Articles 301 and 305, the court of appeal verified whether the decision of the first instance court was lawful and duly reasoned. The court of appeal had the power to examine new evidence, and the evidence which allegedly had not been examined in compliance with the Code. It was entitled:

(a) to reject an appeal;
(b) to quash the judgment of the first instance court and to remit the case for a fresh consideration, if a procedural violation prevented the court of appeal to examine new evidence or the evidence which the first instance court had not examined;
(c) to quash the judgment of the first instance court and to discontinue the proceedings;
(d) to change the judgment or to adopt a new judgment.

37. According to Article 307, the judgment of the first instance court should be quashed and the case should be remitted for a fresh consideration:

(a) if the case had been considered by a person, who had not been entitled to sit as a judge in the case;
(b) if the judgment had been adopted or singed by a judge who had not heard the case;
(c) if the case had been heard in absence of a person who had not been duly informed about the time and place of a hearing; or
(d) if the judgment concerned the rights and obligations of persons who had not participated in the case.

38. Under Article 320, the grounds for an appeal in cassation were incorrect application of substantive law by the lower courts or violation of procedural rules. Article 328 provided that the case should be referred to the Chamber of the Supreme Court:

(a) if the appeal raised an issue of incorrect application of the procedural rules by lower courts;
(b) if a similar case was pending before the Chamber;
(c) if application of the law by lower courts run contrary to the practice of the court of cassation; or
(d) if the court of appeal had acted as a first instance court in the case.

The case could also be referred to the Chamber if the decisions had significant importance for uniform application of the law, or if the appeal contained information about the erroneous application of substantive or procedural law which had led or could have led to the wrongful decision in the case.

39. Pursuant to Article 321 of the Code, an appeal in cassation was to be lodged within three months after the decision of a court of appeal had been pronounced. By the Act of 7 March 2002, which came into force on 4 April 2002 and was later repealed as of 1 September 2005, the above time-limit was reduced to one month. The time-limit for lodging an appeal in cassation could be extended by a first instance court, if it found that the initial time-limit had not been complied with for good reasons.

40. Article 329 of the Code provided for the filter of appeals in cassation by a panel of three judges of the Supreme Court who were entitled to decide whether or not leave to appeal should be granted. No participation of the parties was foreseen at that stage of proceedings. Leave to appeal was granted unless the panel unanimously decided otherwise.

41. Pursuant to Article 334, the court of cassation had power:

(a) to reject an appeal;

(b) to quash, in full or in part, the decision at issue and to remit the case for a fresh consideration to the court of first instance or the court of appeal;

(c) to quash the decision of the court of appeal and to uphold the judgment of the first instance court;

(d) to quash the decisions in the case and to discontinue the proceedings; or

(e) to change the decision on the merits of the case.

B. Judiciary Act of 1981 (“the Act”) (repealed as of 1 June 2002)

42. According to section 19 of the Act, the regional departments of justice (territorial branches of the Ministry of Justice) were responsible for technical maintenance of the district and town courts.

43. Under section 26 of the Act, the president of a district or town court exercised specific managerial and procedural functions. The president presided in court hearings, appointed judges to preside in a hearing, and distributed work among judges. He was also responsible for regular meetings with citizens, explanation of the law to them, and receiving complaints and propositions from them. The president oversaw the work of the registry and bailiffs. He organised the work on judicial statistics, standardisation of judicial practice, and training of the court staff.

THE LAW

I. COMPLAINT ABOUT THE LACK OF IMPARTIALITY

44. The applicant complained under Article 6 § 1 that the Artemivsk Court and the President of that court, Mr V.L.G., who had heard her case, had lacked impartiality, as the defendant company had supplied the court with window grids and a computer, and it had repaired the court's heating system for free. Article 6 § 1 of the Convention reads, in so far as relevant, as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

A. Admissibility

45. The Court notes that the Government have not raised any objection as to the admissibility of the above complaint.

46. The Court considers that the applicant's complaint about the unfairness of the proceedings raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It finds no ground for declaring this part of the application inadmissible.

B. Merits

47. The Government submitted that both the Artemivsk Court and the President V.L.G. had been impartial. In particular, the Government stated that the applicant had been able to introduce her arguments concerning procedural and substantive aspects of the case, which had been duly considered and answered by the courts. The final judgment of the Artemivsk Court was examined by the courts of appeal and cassation, which found that the first instance court had complied with procedural rules. Moreover, the Artemivsk Court allowed the applicant's claim concerning the modification of the reasons for her dismissal. The Government further submitted that the mere fact that a president of the court, in exercising his managerial functions, entered into business relations with a party to the proceedings could not in itself influence his decision in the case. Therefore, there was no indication of either objective or subjective partiality on the part of the President V.L.G.

48. The applicant disagreed.

49. According to the Court's constant case-law, the existence of impartiality for the purposes of Article 6 § 1 must be determined according to a subjective test where regard must be had to the personal conviction and behaviour of a particular judge, that is, whether the judge held any personal prejudice or bias in a given case; and also according to an objective test, that is to say by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality (see, *inter alia*, *Fey v. Austria*, judgment of 24 February 1993, Series A no. 255, p. 12, §§ 27, 28 and 30; *Wettstein v. Switzerland*, no. 33958/96, § 42, ECHR 2000-XII). It must be decided in each individual case whether the relationship in question is of such a nature and degree as to indicate a lack of impartiality on the part of the tribunal (see *Pullar v. the United Kingdom*, judgment of 10 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 794, § 38).

50. As to the subjective test, the personal impartiality of a judge must be presumed until there is proof to the contrary (*Wettstein v. Switzerland*, cited above, § 43).

51. In the instant case, the Court is not convinced that there are sufficient elements to establish that any personal bias was shown by the judges of the Artemivsk Court who sat in the applicant's case. In any event, the Court does not consider it necessary to rule on that question since it has arrived at the conclusion, for the reasons set out below, that there was a lack of objective impartiality.

52. As to the objective test, it must be determined whether, quite apart from the conduct of the President V.L.G., there are ascertainable facts which may raise doubts as to his impartiality. This implies that, in deciding whether in a given case there is a legitimate reason to fear that a particular judge lacks impartiality, the standpoint of the person concerned is important but not decisive. What is decisive is whether this fear can be held to be objectively justified (see *Wettstein v. Switzerland*, cited above, § 44; and *Ferrantelli and Santangelo v. Italy*, judgment of 7 August 1996, *Reports* 1996-III, pp. 951-952, § 58).

53. In this respect even appearances may be of a certain importance or, in other words, “justice must not only be done, it must also be seen to be done” (see *De Cubber v. Belgium*, judgment of 26 October 1984, Series A no. 86, p. 14, § 26). What is at stake is the confidence which the courts in a democratic society must inspire in the public (see *Wettstein v. Switzerland*, loc. cit.; and *Castillo Algar v. Spain*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3116, § 45).

54. The Court observes that the Government did not contest the applicant's submissions that the President of the Artemivsk Court, who sat alone as a first instance judge in the applicant's case and whose decision was upheld by the higher courts, demanded and accepted certain assets from the defendant company for free. In the Court's view, in these circumstances the

applicant's fears that the President V.L.G. lacked impartiality can be held to be objectively justified, notwithstanding the fact that the Artemivsk Court allowed one of the applicant's claims (see paragraph 20 above). Moreover, the higher courts, in dealing with the applicant's appeals, disregarded her submissions to this effect.

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

II. COMPLAINT ABOUT THE LENGTH OF THE PROCEEDINGS

56. The applicants complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, provided in Article 6 § 1 of the Convention, which reads, in so far as relevant, as follows:

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

A. Admissibility

57. 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

58. The Government stated that there were no significant periods of inactivity attributable to the State. According to the Government, the applicant and the defendant company were responsible for substantial delays in the proceedings, as they had failed to appear for a total of 19 hearings, out of which the applicant had not attended 5 hearings. The Government further submitted that a delay of eight months was caused due to the applicant's failure to lodge her appeal in cassation within the time-limit (see paragraphs 29-31 above). They maintained that the case was complicated due to the fact that in the course of the proceedings the applicant had changed her initial claims on several occasions.

59. The applicants disputed the Government's submissions. She maintained that she had not been informed about the hearings from which she had been absent. The applicant also contended that she had lodged her first appeal in cassation within the statutory time-limit.

60. The Court observes that the overall duration of the proceedings, which started on 17 September 1997 and ended on 21 April 2003, excluding the intervals between 24 May and 14 July 1999, 9 March 2000 and 5 July 2000, 24 October 2000 and 20 June 2001, when no proceedings were pending, was around four years and five months (see *Yemanakova v. Russia*, no. 60408/00, § 41, 23 September 2004, and *Efimenko v. Ukraine*, no. 55870/00, § 51, 18 July 2006).

61. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

62. Turning to the facts of the present case, the Court observes that the case initially concerned the lawfulness of the applicant's dismissal from her position of deputy director. In the course of the proceedings the applicant changed her initial claims twice. In particular, in November 1997 the applicant sought annulment of her dismissal from the position of economist and compensation, while in March 2000 she submitted a claim for modification of the reasons for her latter dismissal. The Court considers that, although the subject matter of the litigation at issue could not be considered particularly complex, the case has been somewhat complicated by the applicant's new claims.

63. The Court notes that after the judgment of 9 March 2000, by which the applicant's claim for modification of the reasons for her dismissal had been allowed, the case concerned only the applicant's claim for recovery of salary arrears and compensation. Thus, in the Court's view, the proceedings were of some importance for the applicant. Nonetheless, the Court does not find any ground for the domestic courts to deal with this case with particular urgency *vis-à-vis* other cases pending before them.

64. With regard to the conduct of the applicant and the domestic courts, the Court reiterates that only delays attributable to the State may justify a finding of failure to comply with the "reasonable time" requirement (see *Humen v. Poland,* no. 26614/95, § 66, judgment of 15 October 1999). The Court also recalls that, although a party to civil proceedings cannot be blamed for using the avenues available to him under domestic law in order to protect his interests, he must accept that such actions necessarily prolong the proceedings concerned (see *Malicka-Wasowska v. Poland* (dec.), no. 41413/98, 5 April 2001). The Court notes that the applicant has contributed to the overall length by lodging new claims, which concerned new facts, and by contesting the judgments in her case before the higher courts. Nevertheless, she cannot be held primarily responsible for the length of the proceedings in the instant case.

65. The Court further notes that there were certain delays, attributable to the judicial authorities, which were caused, for instance, by various remittals. These delays however were not significant, having regard to the following considerations.

66. The Courts observes that the case was dealt with by the courts of three levels of jurisdiction repeatedly within relatively short periods of time. In particular, the first instance court reconsidered the case on five occasions, the period of each consideration not having exceeded eight months. The proceedings before the higher courts were completed within one to seven months. In these circumstances, the Court finds that the duration of the proceedings, which lasted four years and five months, did not exceed what may be considered "reasonable".

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

III. OTHER COMPLAINTS

A. Article 13 of the Convention

68. The applicant further complained under Article 13 of the Convention that she could not appeal against the decision of the Presidium of the Donetsk Regional Court of 20 June 2001. She also alleged that the Supreme Court of Ukraine had unlawfully refused to consider her appeal in cassation against that decision.

69. The Court considers that this complaint falls to be examined under Article 6 § 1 of the Convention, which contains an inherent right of access to a court and is, in this respect, to be considered as constituting a *lex specialis* in relation to Article 13 of the Convention (see, *inter alia*, *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, pp. 16-18, §§ 34 et seq.; *Kudla v. Poland* [GC], no. 30210/96, §§ 146 et seq., ECHR 2000-XI). The Court notes that following the decision of the Presidium of the Donetsk Regional Court of 20 June 2001, which under Ukrainian law was not subject to further judicial review, the proceedings in the applicant's case were reopened and the merits of the case were considered by the courts of three levels of jurisdiction, including the Supreme Court. The applicant, accordingly, was able to raise the arguments of her appeal against the decision of 20 June 2001 before these courts. In these circumstances, the Court finds that there is no appearance of a violation of Article 6 § 1 of the Convention in respect of the applicant's inability to challenge the decision of 20 June 2001. Consequently, this part of the application must be rejected as manifestly ill-founded pursuant to Article 35 § 3 of the Convention.

B. Article 4 of the Convention

70. The applicant finally complained that she had been subjected to slavery, as she had been forced to work at the position of economist which was not of her choice. She invoked Article 4 § 1 of the Convention.

71. The Court considers that this part of the application is unsubstantiated and must therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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

73. The applicant claimed the amount of her salary from 20 October 1997 until 9 March 2000 in compensation for pecuniary damage. However, she did not specify the amount of her claim. The applicant further claimed EUR 5,000 in respect of non-pecuniary damage.

74. The Government maintained that the applicant's claims were exorbitant and unsubstantiated.

75. The Court does not discern no causal link between the breach of Article 6 § 1 of the Convention and the alleged pecuniary damage. There is, therefore, no ground for an award under this head.

76. As to compensation in respect of non-pecuniary damage, the Court considers that a finding of a violation of Article 6 § 1 of the Convention constitutes in itself sufficient just satisfaction in the circumstances (see *Mežnarić v. Croatia*, no. 71615/01, § 44, 15 July 2005).

B. Costs and expenses

77. The applicant also claimed UAH 504.87[1] in respect of costs and expenses incurred in the domestic proceedings and before the Court.

78. The Government did not contest this claim.

79. 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. In the present case, regard being had to the information in its

1. Around EUR 78.23.

possession and the above criteria, the Court considers it reasonable to award the sum of EUR 70 for costs and expenses in the proceedings before the Court.

C. Default interest

80. 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 about the lack of impartiality and the length of the proceedings admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the requirement of an impartial tribunal;

3. *Holds* that there has been no violation of Article 6 § 1 of the Convention as regards the length of the proceedings;

4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 70 (seventy euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable on the above amount;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 9 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President