



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

THIRD SECTION

CASE OF JASIŃSKI v. POLAND

(Application no. 72976/01)

JUDGMENT

STRASBOURG

6 December 2007

FINAL

06/03/2008

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 Jasiński v. Poland,

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

Mr B.M. ZUPANČIČ, *President*,

Mr C. BÎRSAN,

Mr L. GARLICKI,

Mrs E. FURA-SANDSTRÖM,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 15 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 72976/01) 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 Andrzej Jasiński (“the applicant”), on 29 November 1999.

2. The applicant, who had been granted legal aid, was represented by Mr Z. Terlik, a lawyer practising in Olsztyn. Since the applicant's representative had not submitted any observations on the admissibility and merits of the case, the legal aid fees had not been paid to him. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, a violation of Article 3 of the Convention on account of injuries sustained by him during his arrest by the police on 16 August 1999. He further complained of censorship of his correspondence with the Court.

4. On 6 October 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

1. Events relating to the police intervention

5. The applicant was born in 1969 and lives in Kamińsk.

6. On the night of 16 August 1999 the applicant and five other men were drinking in a bar, “U Rysia”, in Suwałki. Around midnight a fight broke out outside the bar. Two police officers, K.T and R.Z., saw the fight. They parked their car and approached the fighting men. They saw that one man was lying on the ground (later it turned out that it was the applicant), while two others were kicking and beating him. As the police officers were in plain clothes they showed their police identification cards and ordered the men to stop fighting.

7. Subsequently, several other police cars and an ambulance arrived. There were fourteen police officers at the scene. The arrival of the policemen caused some persons to run away, whereas the applicant himself went into the bar. The applicant refused to go to the hospital, claiming that he was not injured. He was also verbally aggressive towards the police officers. Police officer K.T. attempted to apprehend him and a struggle ensued. Two other police officers, M.S. and M.K., then tried to overpower the applicant, but to no effect as he was very aggressive. The police officers resorted to the use of truncheons. The applicant was handcuffed and placed in a police car. As he refused to get in the car he was again hit with a truncheon on his legs. He was then driven to a sobering-up centre in Suwałki. Upon his arrival, the applicant was allegedly still aggressive and therefore was again hit with a truncheon.

8. Detention Card (*karta pobytu*) no. 1186/99, which contains the record of the applicant's presence at the Suwałki sobering-up centre, provides, *inter alia*, the following description of his medical condition:

“recent truncheon marks on the skin of the head and the back”

9. The Detention Card also provides that at the time of the applicant's arrival at the centre his breath test showed a blood alcohol level of 2.01 ‰.

10. On 17 August 1999 the applicant was examined by a medical doctor. In his report the doctor wrote:

“Numerous bruises are observed, in particular: on both sides of the head and left part of the neck, bruises in the shape of stripes on the right of the chest, right shoulder, right shoulder blade, round bracelet bruises on both wrists, most probably from handcuffs and round bruises above wrists, single bruises in the shape of stripes on the left buttock, thigh and the lower leg. “

11. The applicant and five other men (“K.P.”, “S.S.”, “A.P.”, “R.W.”, and “K.K.”) arrested with him on the night of 16 August 1999 reported the incident to the prosecution authorities. On 17 August 1999 and 18 August 1999, K.P. and S.S. respectively lodged complaints with the Suwałki District Prosecution Office (*Prokuratura Rejonowa w Suwałkach*). They alleged that they had been beaten by the police officers during the arrest on 16 August. On 18 August 1999 an investigation was instituted. Subsequently, on 23 August 1999 the applicant presented himself at the Prosecution Office and lodged a complaint about the police. He complained that upon his arrival at the sobering-up centre he had been dragged out of the police car, pushed on the ground and beaten and kicked by the police officers. He claimed that during the whole incident he had been handcuffed. Three further victims of the alleged police ill-treatment lodged their complaints with the Suwałki District Prosecutor on the following dates: A.P. on 20 August, R.W. on 23 August and K.K. on 24 August.

12. During the course of investigation proceedings the Prosecutor heard evidence from the applicant and five other alleged victims, from the fourteen police officers who took part in the intervention, employees of the sobering up-centre, the ambulance personnel, the owner of the bar “U Rysia” and his family, and other clients of the bar who were present during the intervention.

13. As there were discrepancies between the medical reports produced by the applicant and the other men and their detention cards from the sobering-up centre, the prosecution also obtained a medical report which was submitted on 3 December 1999. It reads in so far as relevant:

“The bruises and haematomas on the applicant's head and neck were caused by a blow with a hard and blunt object, and they could have been caused by kicking during the incident that took place in front of the Bar “U Rysia”. Stripe shaped bruises were caused by blows with a hard, blunt and long object, which could have been a police truncheon. The injuries sustained by the applicant caused bodily harm lasting no longer than seven days (Art. 157 § 2 criminal code).”

14. On 16 December 1999 the Suwałki District Prosecutor discontinued the investigation into the allegations made by the applicant and the five other men and refused to prosecute the police officers involved in the incident of 16/17 August 1999. In its decision the Prosecutor stated that while it is true that the policeman used physical force against the applicant and five other men, the use of force was justified under the circumstances of the instant case. The testimonies of the police officers were credible and coherent. On the other hand the victims' testimonies were highly doubtful. In particular, except for one, they all claimed that no fight had taken place and that the injuries that they sustained had been the result of the police intervention. One victim, K.P., expressly stated that “all those involved in the fight were apprehended by the police”. Finally, the Prosecutor observed that there was not enough evidence to lead to the conclusion that the police

officers had committed an offence described in Article 231 of the Criminal Code.

15. On 17 December 1999 the applicant lodged an appeal against this decision with the Suwałki Regional Prosecutor. The Regional Prosecutor advised the applicant that he could not see any grounds for allowing his appeal and had therefore transmitted it along with the case file to the Suwałki District Court (*Sąd Rejonowy*).

16. On 24 February 2000 the Suwałki District Court upheld the Prosecutor's decision. The court held that the prosecutor's decision was well reasoned. It further stressed that when testifying, the policemen had admitted that they had used force while arresting the applicant and five other persons. There was no further evidence to lead to the conclusion that the police officers had lied when testifying. This decision was final.

2. Monitoring of the applicant's correspondence

17. At the time of lodging his application with the Court the applicant was detained in the course of criminal proceedings against him. As of an unknown date in 2003 he has been serving a prison sentence.

18. On 20 December 1999, the Registry of the Court received the applicant's first letter dated 29 November 1999. The letter was delivered in an envelope bearing a red stamp which read "Censored on 7 December 1999, Prosecutor of the Regional Prosecution Office" and an illegible signature (*Cenzurowano 7 grudnia 1999, Prokurator Prokuratury Okręgowej*).

19. On 23 March 2000, 22 June 2000, the Registry of the Court received another two letters from the applicant. They were all delivered in envelopes bearing a red stamp "censored (*cenzurowano*)". They also bear a stamp "Remand Centre in Suwałki (*Areszt Śledczy w Suwałkach*) and another red stamp reading "Censored on... Prosecutor of the Regional Prosecution Office", a handwritten date and a signature.

20. In his correspondence with the Registry, the applicant stated that all letters sent to him by the Court had been censored by the Regional Court in Suwałki. In this respect he submitted an envelope from the Registry of the Court which was sent to him on 9 January 2003. That envelope is marked with a purple stamp which reads "Censored"; it also bears a handwritten date, 15 January 2003, and an illegible signature.

II. RELEVANT DOMESTIC LAW

1. The Criminal Code 1997

21. The relevant parts of Article 157, provide:

“§ 2 A person who causes bodily harm or ill health lasting no longer than 7 days shall be liable to a fine, a penalty of the restriction of liberty or imprisonment for a term not exceeding 2 years.

§ 3 If a person who committed an act described in (...) § 2 acts without intent, he shall be liable to a fine, a penalty of the restriction of liberty or imprisonment for a term not exceeding 1 year.

§ 4 The prosecution of a crime described in § 2 or 3, if bodily harm or ill health occasioned lasted no longer than 7 days, shall take place under private indictment. ...”

2. Use of force by the police

22. The relevant parts of Section 16 of the Police Act of 6 April 1990 read as follows:

“1. If a lawful order given by a police authority or a policeman has not been complied with, policemen may apply the following coercive measures:

- 1) physical, technical and chemical means of restraining or escorting persons or of stopping vehicles;
- 2) truncheons;
- 3) water cannons;
- 4) police dogs and horses;
- 5) rubber bullets fired from fire-arms;

2. Policemen may apply only such coercive measures that correspond to the exigencies of a given situation and are necessary to ensure their orders are obeyed.”

Paragraph 5 of the Ordinance of the Council of Ministers of 17 September 1990 on the Use of Coercive Measures by the Police provides:

“1. Physical force shall be used in order to restrain a person, to counter an attack or to make [a person] obey an order.

2. When using physical force, no one shall hit a person, unless he has to do so in self-defence or in order to counter an unlawful attack against life, health or property of others.”

The relevant part of paragraph 6 of the Ordinance provides as follows:

“Handcuffs may be used (...) in order to prevent an escape or to prevent an active assault or active resistance. ...”

3. *Sobering-up centres*

23. According to Section 39 of the Law of 26 October 1982 on Education in Sobriety and Counteracting Alcoholism, sobering-up centres are operated by local authorities.

The relevant parts of Article 40 of the Law provide:

“1. Intoxicated persons who behave offensively in a public place or a place of employment, are in a condition endangering their life or health, or are themselves endangering other persons' life or health, may be taken to a sobering-up centre or a public health care facility, or to their place of residence.

(...)

3. [Intoxicated] persons who have been taken to a sobering-up centre or a police station shall remain there until they are sober but no longer than twenty-four hours. ...”

4. *Monitoring of correspondence.*

24. The relevant domestic law concerning the censorship of correspondence is set out in the Court's judgment in the case of *Michta v. Poland*, no. 13425/02, §§ 33-39, 4 May 2006.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

25. The applicant complained that he had been ill-treated by the police officers in breach of Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. *Admissibility*

26. The Government raised a preliminary objection that the applicant had not exhausted all available domestic remedies in respect of his allegations of ill-treatment. They argued that under Article 55 § 1 of the Code of Criminal Proceedings taken in conjunction with Article 330 § 2, the applicant, after the investigation had been discontinued, could have brought a private action against the alleged culprits.

27. The Court recalls that the aim of the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention is to afford

Contracting States an opportunity to put matters right through their own legal system before having to answer to an international body for their acts. However, although Article 35 § 1 requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, it does not require that in cases where the national law provides for several parallel remedies in the sphere of both civil and criminal law, the person concerned, after a sustained but eventually unsuccessful attempt to obtain redress through one such remedy, must necessarily try all other means (see *H.D. v. Poland*, no. 33310/96, 7 June 2001, and *Olszewski v. Poland* (dec.), no. 55264/00, 13 November 2003)

28. The Court does not therefore consider that, after the prosecuting authorities had discontinued the investigation instituted at the applicant's request, he was required to bring private prosecution against the police officers in order to fulfil his obligation under Article 35 § 1 (see, *mutatis mutandis*, decision in the *H.D.*, cited above).

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. Alleged ill-treatment by the police

(a) The parties' submissions

30. The applicant submitted that during the police intervention on 16 August 1999 he had been beaten by police officers. First he had been beaten up while he had been struggling with other men in front of the bar "U Rysia". Subsequently, upon his arrival at the sobering up-centre he had been dragged out of the car and thrown on his knees. The policemen had been beating him with their fists and truncheons, they also kicked him. The applicant claimed that the fact that he had been intoxicated at the time of his arrest had not been of any relevance. He concluded that there had been a violation of Article 3.

31. The Government maintained that the applicant had not been subjected to treatment contrary to Article 3 of the Convention. They submitted that the police officers had not denied the use of physical force. Nevertheless, the force used in the instant case had been proportionate and not excessive. In particular they referred to the trial court's decision that the facts established during the investigation had given no reason to conclude

that the police officers had abused their powers and had acted against Polish law.

32. In addition the Government maintained that during the intervention the applicant had behaved in an aggressive manner and had refused to obey the police orders. In conclusion, the Government submitted that no substantive violation of Article 3 had occurred in the present case.

(b) The Court's assessment

33. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162).

34. The Court also points out that where an individual, when taken into police custody, is in good health, but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, pp. 40-41, §§ 108-11, and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

35. In assessing evidence, the Court has generally applied the standard of proof “beyond reasonable doubt” (see *Ireland v. the United Kingdom*, cited above, pp. 64-65, § 161). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, pp. 25-26, § 34, *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

36. Turning to the circumstances of the present case the Court observes that the parties have not disputed that some of the impugned injuries could have been caused by the police officers by way of their using truncheons (see paragraphs 30, 31 above).

37. The Court notes that the applicant does not dispute that he showed some form of resistance to the police officers who detained him on 16 August 1999 (see paragraph 7 above). In addition the arrest occurred after the applicant had been involved in a fight. While fourteen police officers outnumbered the applicant and five other men involved in the struggle, account must be taken of the fact that the applicant effectively resisted the actions of the police officers by refusing to comply with their

orders, resisting the attempts of the policemen to apprehend him and behaving aggressively (see paragraphs 6, 7 above). Thus, it could be considered reasonable for the police officers to use a certain degree of physical force in order to overpower him and carry out the arrest and detention (see. *Berliński v. Poland*, nos. 27715/95 and 30209/96, § 61-64, 20 June 2002).

38. The Court further observes that the prosecution service and the District Court reached the conclusion that some of the bruises and marks on the applicant's skin resulted from the justified use of force by the police officers when they were overpowering him. On the other hand some of the injuries could have been caused by kicking during the incident that took place in front of the bar (see paragraphs 13-16 above). In reaching that conclusion the domestic authorities had the benefit of hearing various witnesses give evidence and of evaluating their credibility.

39. In these circumstances, the Court considers that the recourse to physical force in this case was made necessary by the applicant's own conduct. Therefore, while the applicant admittedly suffered as a result of the incident of 16 August 1999, the use of force against him cannot be held to have been excessive.

40. Accordingly, the Court concludes that there has been no violation of the substantive limb of Article 3 of the Convention.

2. Adequacy of the investigation

(a) The parties' submissions

41. The applicant maintained that the investigation into his allegations had not been effective and thorough.

42. The Government did not agree with this assertion. They considered that the investigation into the applicant's allegations had been thorough and effective. It had been completed four months after the impugned events occurred. In the course of the investigation all those involved in the clash, the intervening policemen, the employees of the sobering-up centre and other relevant witnesses had given evidence. In addition, the prosecutor had obtained a medical expert's opinion to assess the applicant's allegation of ill-treatment. Lastly, they stressed that the applicant had had an opportunity to review the decision of the District Prosecutor before the Regional Prosecutor and finally before the District Court. They concluded that the investigation in the present case had complied with the Article 3 requirements.

(b) The Court's assessment

43. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by the police in breach of

Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This investigation should be capable of leading to the identification and punishment of those responsible (see *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3290, § 102, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

44. Turning to the facts of the present case the Court observes that a number of witnesses were questioned and an expert opinion was produced in the context of the investigation into the applicant's allegations of ill-treatment on 16 August 1999 (see paragraphs 12 and 13 above). Subsequently, the prosecution decided not to charge the policemen and to discontinue the investigation because of the lack of the unequivocal evidence of the officers' guilt. The district prosecutor's investigation was completed on 16 December 1999, that is, four months after the impugned events. In addition, the decision of the prosecution service was verified by the District Court.

45. In view of the foregoing, the Court considers that the investigation in the applicant's case was effective and capable of leading to the identification and punishment of those allegedly responsible. This conclusion is based on the number of witnesses questioned by the prosecutor, the documents taken into account and the promptness of the investigation.

46. Against this background, the Court concludes that the investigation into the applicant's allegations of ill-treatment was thorough and effective. There has thus been no breach of Article 3 of the Convention in this respect.

II ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

47. The applicant complained about censorship of his correspondence with the Court. He relied on Article 8 of the Convention which provides in its relevant part:

"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."

A. Admissibility

48. 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. *The parties' submissions*

49. The applicant argued that the circumstances of his case disclosed a breach of Article 8 of the Convention.

50. The Government refrained from expressing their opinion on the admissibility and merits of the complaint. They noted that there had been stamps reading “censored” on the envelopes of the applicant's letters to the Court of 8 December 1999 and 16 June 2000, as well as the Court's letter to the applicant of 9 January 2003. However, the copies of these letters which were available to the Government did not show any signs of censorship.

2. *The Court's assessment*

(a) Existence of an interference

51. The Court first observes that the applicant's letter of 29 November 1999 bears a red stamp reading “Censored on 7 December 1999, Prosecutor of the Regional Prosecution Office” and an illegible signature. The stamp appears on the envelope. Similar stamps appear on the envelopes of the applicant's letters received at the Court on 23 March 2000 and 22 June 2000 (see paragraphs 18 and 19 above)

52. The applicant also submitted an envelope from the Court addressed to him, which bears a purple stamp which reads “Censored”; it also bears a handwritten date, 15 January 2003, and an illegible signature (see paragraph 20 above)

53. The Court notes that the Government refrained from taking a position on the question whether there had been an interference with the applicant's right to respect for his correspondence. The Court has held on many occasions that as long as the Polish authorities continue the practice of marking detainees' letters with the *ocenzurowano* stamp, the Court has no alternative but to presume that those letters have been opened and their contents read, even if there is no separate stamp on the letter as such (see *Matwiejczuk v. Poland*, no. 37641/97, § 99, 2 December 2003, and *Pisk-Piskowski v. Poland*, no. 92/03, § 26, 14 June 2005)

54. It follows that the censoring of the applicant's correspondence with the Court amounted to an “interference” with his right to respect for his correspondence under Article 8.

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

55. The Court reiterates 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).

56. The Court observes that the Government did not indicate a concrete legal basis in the domestic law for the impugned interference. It further notes that the impugned interference took place on three occasions between 7 December 1999 and 15 January 2003 when the applicant had been detained pending trial or was serving a prison sentence.

57. The Court observes that, according to Article 214 of the Code of Execution of Criminal Sentences, persons detained pending trial 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 same Code, which expressly relates to convicted persons, was also applicable to detained persons (see *Michta v. Poland* no. 13425/02, § 61, 4 May 2006, and *Kwiek v. Poland*, no. 51895/99, § 44, 30 May 2006). Thus, the censorship of the applicant's letters to the Court was contrary to the domestic law. It follows that the interference in the present case was not “in accordance with the law”.

58. Accordingly, 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.

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.”

A. Damage

60. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

61. The Government submitted that the applicant's claim was excessive. They asked the Court to rule that a finding of a violation of the Convention constituted in itself sufficient just satisfaction. In the alternative, they invited the Court to assess the amount of just satisfaction on the basis of its case-law in similar cases and having regard to national economic circumstances.

62. The Court considers that the applicant has suffered non-pecuniary damage which is not sufficiently compensated by the finding of a violation of the Convention. Considering the circumstances of the case, and making its assessment on an equitable basis, the Court awards the applicant EUR 500 under this head.

B. Costs and expenses

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

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 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 500 (five hundred euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the date of the settlement, plus any tax that may be chargeable;

(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 6 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President