



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

FIFTH SECTION

CASE OF DOROZHKO AND POZHARSKIY v. ESTONIA

(Applications nos. 14659/04 and 16855/04)

JUDGMENT

STRASBOURG

24 April 2008

FINAL

24/07/2008

This judgment may be subject to editorial revision.

In the case of Dorozhko and Pozharskiy v. Estonia,

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

Peer Lorenzen, *President*,

Volodymyr Butkevych,

Rait Maruste,

Renate Jaeger,

Mark Villiger,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 25 March 2008,

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

PROCEDURE

1. The case originated in two applications (nos. 14659/04 and 16855/04) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a stateless person, Mr Aleksandr Dorozhko, and by an Estonian national, Mr Vyacheslav Pozharskiy (“the applicants”), on 12 April and 7 April 2004, respectively.

2. The applicants, who had been granted legal aid, were represented by Mr M. Männik, a lawyer practising in Tallinn. The Estonian Government (“the Government”) were represented by their Agent, Ms M. Hion, Director of the Human Rights Division of the Legal Department of the Ministry of Foreign Affairs.

3. On 22 February 2007 the Court declared the applications partly inadmissible and decided to communicate the complaints concerning the lack of impartiality of a City Court judge to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the applications at the same time as their admissibility.

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

4. Mr Aleksandr Dorozhko, the applicant in application no. 14659/04 (“the first applicant”), was born in 1960. Mr Vyacheslav Pozharskiy, the

applicant in application no. 16855/04 (“the second applicant”), was born in 1981. Both of them are currently serving prison sentences.

5. The applicants were arrested around midnight on the night of 8 to 9 November 2002. They were initially suspected of having caused grievous bodily harm and of temporary unauthorised use of other persons’ movable property (cars). Subsequently, the applicants were also charged with robbery.

6. On 20 November 2002 the Tallinn City Court (*linnakohus*) refused to extend the applicants’ detention. The second applicant was released. The first applicant, however, was not released by the police; he was kept under arrest and declared under suspicion of an offence of threatening behaviour. On 22 November 2002 the City Court authorised his further detention.

7. In the meantime, on 20 November 2002, the police chief inspector I. P. ordered that a team of investigators be set up for the criminal case concerned. The team consisted of I. P. himself as the head of the team and three other senior police inspectors: L., G. and K.

8. In the submission of the Government, the further criminal investigation was practically solely carried out by police investigator L., while only a few procedures were performed by investigators G. and K. The criminal case file did not contain any indication that I. P. personally performed any investigative actions or that he issued any instructions or guidelines to the members of the team.

9. Nevertheless, the first applicant was informed by the Tallinn Police Prefecture and the Public Prosecutor’s Office during the pre-trial investigation, in response to his complaints, that I. P. was a member of the team of investigators set up for the criminal case concerned and he had the powers to conduct all investigative activities.

10. On 14 March 2003 the Lääne County Court (*maakohus*) authorised the second applicant’s detention until 14 May 2003 in different criminal proceedings not related to the present case.

11. In the meantime, on 3 February and again on 29 April 2003, after the Public Prosecutor’s Office had amended the charges, the applicants were committed for trial by the Tallinn City Court. The case was heard by a court composed of a professional judge, E. P., and two lay judges. The hearings before the City Court took place on several dates.

12. At a City Court hearing on 30 May 2003 the first applicant said in his closing statement that because he had refused to cooperate with the police investigators B., I. P. and K., the charges against him had been changed. He also said that although a judge had ordered his release, police investigators I. P. and K. had not released him from the police cell but had detained him again on suspicion of threatening behaviour.

13. On 30 May 2003 the City Court convicted the applicants of robbery and temporary unauthorised use of other persons’ movable property. The first applicant was also convicted of an offence of threatening behaviour.

The first applicant was sentenced to nine years' and the second applicant to seven years' imprisonment.

14. The applicants and the first applicant's lawyer appealed against the judgment. The applicants in their appeals challenged, *inter alia*, the impartiality of the City Court's judge E. P., as her husband, I. P., had headed the team of investigators which had been set up for the investigation of the criminal case concerned. The second applicant noted that this issue had been raised at a City Court hearing but judge E. P. had not withdrawn.

15. On 6 June 2003 the first applicant's wife also lodged a complaint to the Court of Appeal, arguing, *inter alia*, that judge E. P. should have withdrawn because her husband had been involved in the pre-trial investigation.

16. At the hearing before the Court of Appeal on 9 October 2003 the first applicant raised the issue of impartiality of the City Court judge E. P. According to the record of the hearing, he stated as follows:

"The presiding judge was [E. P.]. Her husband was the person who carried out the preliminary investigation. I only learned about it after the court hearing. This fact affected the impartiality of the judge. It could also be seen from the record [of the court hearing] because it is imprecise. ... It affected the judicial investigation. The judge did not grant my requests, everything happened very quickly. She^[1] wanted to have me imprisoned. I did not request the removal of the judge. I did not know at that time that her husband had been the head of the preliminary investigation."

17. According to the prosecutor the applicants had not been aware that E. P. and I. P. were married to each other when the City Court began to hear the case. In her submission they had become aware of it later, by the time of the subsequent hearings. However, no requests for removal of the judge had been made.

18. At the end of the Court of Appeal hearing the second applicant said that I. P. had interrogated him. He added: "[I. P.] threatened me [and said] that if I confessed, I would not go to prison."

19. On 9 October 2003 the Tallinn Court of Appeal (*ringkonnakohus*) acquitted the applicants in respect of the second count of temporary unauthorised use of other persons' movable property. It upheld the City Court's judgment in the remaining part.

20. Referring to Article 20 § 1 of the Code of Criminal Procedure (*Kriminaalmenetluse koodeks*), which concerned grounds for disqualification of a judge, the Court of Appeal found that the applicants' allegations did not warrant quashing the City Court's judgment and referring the case to the first-instance court for a new trial. Moreover, it was noted that none of the parties to the proceedings had requested judge E. P.'s disqualification during the proceedings in the City Court; neither had the

1. The Estonian pronoun *ta* used in the record of the court hearing can be translated as "he", "she" or "it". It is therefore not clear whether the applicant referred to the City Court judge, the City Court or the police investigator.

impartiality of the judge nor that of the court been put into doubt in the appeals. The first applicant had submitted at the Court of Appeal hearing that he had become aware of the fact that I. P. was the judge's husband during the court proceedings. The Court of Appeal found, however, that the judge's possible relationship with an official participating in the preliminary investigation did not prove the judge's partiality. It noted that although I. P. had been the head of the team of police officers investigating the case, the investigation had in fact been carried out by another police investigator. None of the reports concerning various investigative activities (*uurimistoimingu protokoll*) in the case file had been drawn up by I. P. Moreover, besides judge E. P., two lay judges had taken part in deciding the case. The Court of Appeal considered that the allegation concerned was artificial and had been submitted with a view to delaying the proceedings.

21. In his appeal to the Supreme Court (*Riigikohus*), the first applicant argued that judge E. P. could not have been unaware of the fact that her husband had led the team of investigators and that the applicant had made several complaints during the preliminary investigation to the Public Prosecutor's Office against the police investigators, including I. P. He asserted that judge E. P. should have withdrawn from hearing the case. In his view the judicial investigation in the City Court had not been impartial; the lack of impartiality had particularly been reflected in the severity of the sentence. The applicant had not requested E. P.'s removal because he had found out too late and through informal sources that she was married to I. P. Nevertheless, he was of the opinion that his failure to request the judge's removal should not deprive him of the right to impartial adjudication of the charges against him.

22. The second applicant argued in his appeal to the Supreme Court that judge E. P. had had no right to administer justice in respect of him because she was the wife of the head of the team of police investigators.

23. On 21 January 2004 the Supreme Court refused the applicants leave to appeal.

II. RELEVANT DOMESTIC LAW

24. According to Article 20 § 1 of the Code of Criminal Procedure (*Kriminaalmenetluse koodeks*), as in force at the material time, a judge could not participate in criminal proceedings and had to be disqualified if he or she had a direct or indirect personal interest in the case or if other circumstances gave reasons to doubt his or her impartiality. Article 20 § 3 provided that a person who was related to an official conducting a preliminary investigation or court proceedings in a criminal case could not participate in the proceedings as an expert, specialist, defence counsel or representative of a victim, plaintiff or defendant, or as an interpreter or translator.

25. Article 26 § 1 (2) of the Code stipulated that a person whose spouse had participated in the proceedings of a criminal case (*menetlusosaline kriminaalasjas*) could not act as a judge in that case. The same applied in respect of a person with regard to whom facts were presented which gave reason to doubt his or her impartiality (Article 26 § 1 (4)).

26. Article 34 § 1 of the Code provided that participants in the criminal proceedings (*kriminaalmenetluse osaline; menetlusosaline*) were: suspect, accused, accused at trial and his or her defence counsel, prosecutor in court proceedings, and victim, plaintiff, defendant and their representative.

27. In Article 107-1 § 1 of the Code the rights and obligations of a head of the investigation (*uurimisjuht*) were enumerated. He or she could monitor the activities of a preliminary investigator and give him or her instructions; form teams of investigators (*uurimisgrupp*); annul unlawful or unjustified orders of preliminary investigators; participate in the actions of preliminary investigators or personally perform actions in a criminal matter.

28. Under Article 178 of the Code a head of the investigation could form a team of investigators by his or her order. The head of the team of investigators (*uurimisgrupi vanem*) had to be named in the order. The latter had to coordinate the activities of the team of investigators.

29. Article 231 of the Code provided that after a judge had announced the panel of the court, he or she had to explain to the participants in the proceedings their right to request the judge's or lay judges' disqualification.

30. Article 232 of the Code stipulated that judges and lay judges had to withdraw from hearing of the case, and the participants in the proceedings had the right to request their disqualification, under the circumstances specified in Article 20 or 26 of the Code.

THE LAW

I. JOINDER OF THE APPLICATIONS

31. The Court considers that, in accordance with Rule 42 § 1 of the Rules of Court, the applications should be joined, given their common factual and legal background.

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

32. The applicants complained that they had been deprived of their right to an impartial tribunal as provided in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

A. Admissibility

33. 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

(a) The Government

34. The Government argued that the applicants had not requested the disqualification of judge E. P., thereby waiving their right thereto. In the Government's submission, the applicants were already aware of the fact that judge E. P. and investigator I. P. were married to each other during the proceedings before the City Court, although not necessarily during the first court hearing. However, even at a later stage of the proceedings they could have requested the judge's disqualification but they had not done so. Referring to the records of the court hearings of 29 April and 27 May 2003, according to which the applicants did not make any requests for disqualification, the Government argued that the applicants at least tacitly waived any rights they may have had under Article 6 concerning the issue of impartiality of the judge.

35. The Government reiterated that under the subjective test, the personal impartiality of a judge had to be presumed until there was proof to the contrary. In the present case, no evidence calling into doubt the personal impartiality of the City Court judge had been adduced before the Court.

36. Under the objective test, the Government considered that the applicants' fears as to the lack of the judge's impartiality could not be held to be objectively justified. They submitted that there was no evidence to allow a conclusion that I. P. had had a direct connection with the conduct of the preliminary investigation of the criminal case. The team of investigators set up for the investigation had comprised four investigators, each of whom had been authorised to perform investigative actions. In fact, the investigation had mainly been carried out by investigator L., while investigators G. and K. had also performed some actions. In the Government's submission I. P. had not been personally involved in the preliminary investigation, although he had been formally appointed as the

head of the team of investigators. He had not signed any orders or other procedural documents and there was no indication that he had given any instructions or guidelines to the other investigators. The only document signed by I. P. in the criminal case file had been the order setting up the team of investigators.

37. The Government found that in a small country like Estonia the requirement for automatic disqualification of a judge on the mere grounds of her being married to an investigator would be too sweeping. Moreover, E. P. had not been the only judge hearing the case – two lay judges had also participated in deciding the criminal matter. Finally, the Government pointed out that, subsequent to the proceedings in the City Court, the case had also been heard by the Court of Appeal, which had examined both the applicants' allegations on the lack of impartiality of the City Court judge and adjudicated the case on its merits, partially relieving the applicants of the charges.

(b) The applicants

38. The applicants challenged the Government's argument that after the team of investigators had been set up, I. P. had not performed any investigative actions. They emphasised that the first applicant had been informed by the Tallinn Police Prefecture and the Public Prosecutor's Office that I. P. had been a member of the team of investigators set up for the criminal case concerned having the powers to conduct all investigative activities. They submitted that, as head of the team of investigators, he had had, under Article 107-1 of the Code of Criminal Procedure, the power to control the actions of other investigators and that he had in fact exercised this power. This had been indirectly confirmed by the first applicant's statement before the City Court on 30 May 2003, where he had said that the charges against him had been changed when he had refused to cooperate with I. P. and that I. P. had not released him from the police cell. Accordingly, the applicants maintained that the mere fact that the investigative activities carried out by I. P. had not been recorded or that they had consisted of giving oral instructions to other investigators did not refute the fact that he had actually been in charge of the investigation of the applicants' case.

39. The applicants also contested the Government's argument that they knew the judge and investigator were married to each other during the proceedings in the City Court. The second applicant had had certain suspicions that I. P. and E. P. might have been married but the City Court had not replied to his remark to that effect. The applicants emphasised that the family name P. was common in Estonia.

40. The applicants contended that they had never waived any of their rights under Article 6 of the Convention. In any event, such a waiver would

have run counter to an important public interest – the requirement that the courts inspire confidence in the public and in the accused.

41. In the applicants' submission, the judge's lack of impartiality in the present case had been demonstrated by the fact that she had dismissed their requests to summon a forensic expert and the first applicant's objections to the records of the hearings. Accordingly, the judge had been partial under the subjective test.

42. So far as the objective test was concerned, the applicants reiterated that I. P. had been the head of the team of investigators and that they had known him as a person involved in the investigation of the criminal case concerned, regardless of whether any documents had been signed by him. They argued that it was not plausible that the judge had not familiarised herself with the order signed by I. P. or that she had not discussed business with her husband. In the applicants' submission it was clear that the judge could not have been objective as their acquittal would have run counter to the interests of her husband's career.

43. The applicants considered that the Court of Appeal had failed to remedy the defect that had occurred in the first-instance proceedings.

44. The applicants emphasised that the Contracting States were under the obligation to organise their legal systems so as to ensure compliance with the requirements of Article 6 § 1, impartiality being unquestionably one of the foremost of those requirements. As concerns the lay judges, the applicants pointed out that they did not have legal qualifications and they had been unable to resolve questions of law. In practice, the proceedings had been conducted and the judgment composed by judge E. P.; the lay judges' presence had been mainly formal.

2. The Court's assessment

(a) Whether the applicants waived their right under Article 6 § 1

45. The Court observes at the outset that in the Government's submission the applicants had not requested the disqualification of judge E. P. and thereby waived their rights under Article 6 § 1 of the Convention. The applicants did not agree.

46. The Court notes that it has accepted in its case-law the possibility that a person may waive his or her right guaranteed under the Convention. However, such a waiver must be made in an unequivocal manner and must not run counter to any important public interest (see, for example, *Håkansson and Sturesson v. Sweden*, judgment of 21 February 1990, Series A no. 171-A, p. 20, § 66, and *Mikolenko v. Estonia* (dec.), no. 16944/03, 5 January 2006).

47. In the present case, the applicants and the Government disagreed on when exactly the applicants had become aware that the City Court judge and the investigator were married to each other. The Government conceded that

the applicants had not necessarily been aware of it at the beginning of the judicial examination of the case. They argued, on the basis of the prosecutor's statement before the Court of Appeal (see paragraph 17 above) and on the fact that the first applicant's wife had complained about the involvement of judge E. P. immediately after the City Court had delivered its judgment (see paragraph 15 above), that the applicants must already have become aware that the two were married before the end of the proceedings before the City Court. In the applicants' argument, they had not been aware that the judge and the investigator were married at that time. The second applicant admitted that he had had some suspicions about it. The first applicant had stated before the Court of Appeal that he had become aware that they were married after the City Court had closed the hearing.

48. The Court notes that the material in its possession does not allow it to make a firm conclusion on when exactly the applicants became aware of the judge's and the investigator's marriage. It appears probable that they already had certain suspicions to that effect during the proceedings before the City Court and that these suspicions were subsequently confirmed in one way or another. The Court takes into consideration that the first applicant was detained throughout the criminal proceedings and that the second applicant was also detained for a certain period, so they must have had difficulties in obtaining reliable – or indeed official – information on whether their suspicions were justified.

49. In any event, the Court notes that the second applicant voiced his doubts at the hearing before the City Court and the applicants raised this issue in their appeals shortly after the proceedings in the City Court had come to an end. Against this background, the Court is unable to conclude that the applicants unequivocally waived their right to request the disqualification of the judge. The Court also notes in this context that the Court of Appeal examined this complaint on its merits and did not dismiss it on formal grounds as having been made too late.

(b) Whether there was a violation of Article 6 § 1

50. The Court reiterates that it is of fundamental importance in a democratic society that the courts inspire confidence in the public and above all, as far as criminal proceedings are concerned, in the accused (see *Padovani v. Italy*, judgment of 26 February 1993, Series A no. 257-B, p. 20, § 27). Article 6 of the Convention requires a tribunal to be impartial. Impartiality normally denotes absence of prejudice or bias. The Court has determined the existence or absence of impartiality of a judge according to a subjective test, that is on the basis of the personal conviction or interest of a particular judge in a given case, and also according to an objective test, that is, by ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect (see, for example, *Kyprianou v. Cyprus* [GC], no. 73797/01, § 118, ECHR 2005-...; *Pétur Thór Sigurðsson*

v. *Iceland*, no. 39731/98, § 37, ECHR 2003-IV; and *Piersack v. Belgium*, judgment of 1 October 1982, Series A no. 53, pp. 14-15, § 30).

51. As to the subjective test, the personal impartiality of a judge must be presumed until there is proof to the contrary (see *Kyprianou*, cited above, § 119, with further references).

52. As concerns the objective test, it must be determined whether, quite apart from the judge's conduct, there are ascertainable facts which may raise justified doubts as to his or her 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 *Micallef v. Malta*, no. 17056/06, § 74, 15 January 2008; *Wettstein v. Switzerland*, no. 33958/96, § 44, ECHR 2000-XII; and *Ferrantelli and Santangelo v. Italy*, judgment of 7 August 1996, *Reports* 1996-III, pp. 951-52, § 58). 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 *Micallef*, cited above, § 75; and *De Cubber v. Belgium*, judgment of 26 October 1984, Series A no. 86, p. 14, § 26).

53. At the outset, the Court takes note of the Government's argument that Estonia is a small country and that in the Government's view a requirement for automatic disqualification of a judge on the mere grounds of her being married to an investigator would be too sweeping. However, in proceedings originating in an individual application the Court has to confine itself, as far as possible, to an examination of the concrete case before it (see *Wettstein*, cited above, § 41). Moreover, the Court reiterates that the Contracting States are under the obligation to organise their legal systems so as to ensure compliance with the requirements of Article 6 § 1, impartiality being unquestionably one of the foremost of those requirements. The Court's task is to determine whether the Contracting States have achieved the result called for by the Convention (see *De Cubber*, cited above, p. 20, § 35).

54. In the present case, the Court notes that the applicants referred to the judge's lack of impartiality under the subjective test as she had dismissed several requests submitted by the applicants (see paragraph 41 above). The Government disagreed.

55. The Court, being aware of the difficulty of rebutting the presumption of subjective impartiality, is nevertheless unable to conclude, on the evidence before it, that judge E. P. in the present case displayed hostility or ill-will for personal reasons so as to call into doubt her impartiality under the subjective test (see *Micallef*, cited above, § 72).

56. The Court finds that the case is different in so far as the objective test is concerned. It appears probable that judge E. P. was aware of the fact that her husband had been the head of the team of investigators dealing with

the applicants' case. If not from the beginning, this was the case at least from the time the second applicant had voiced his suspicions to that effect.

57. As to the Government's argument that the task of heading the team had been merely of a formal nature, the Court notes that the team had been set up specifically for the investigation of the applicants' case. This means, in the Court's view, that I. P.'s connection with the applicants' criminal case must have been considerably closer than, for example, that of the head of a police institution who could have had formal responsibility for all criminal matters dealt with at any given time. Moreover, the first applicant had been informed by the police and the Public Prosecutor's Office that I. P. was a member of the team of investigators set up for the criminal case concerned having the powers to conduct all investigative activities. The first applicant can be understood as having considered I. P. personally responsible for the investigation. Furthermore, the Court cannot disregard the first applicant's statements before the City Court according to which I. P. had in fact participated in the investigation (see paragraph 12 above).

58. In the Court's view the above is sufficient to conclude that there were ascertainable facts which could raise objectively justified doubts as to the impartiality of the trial court presiding judge. Thus, there was at least an appearance of a lack of impartiality by the judge E. P., owing to her husband's involvement in the pre-trial investigation of the criminal case. The Court does not consider it decisive that two lay judges were in the composition of the court or that the case was also heard by the Court of Appeal. It appears evident that the professional judge's role in the proceedings was paramount compared to the lay judges. The Court of Appeal, however, failed to remedy the situation. The Court notes that the impartiality issue was raised before the Supreme Court which also had all powers to remedy the situation but which decided not to grant the applicants leave to appeal.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The first applicant made no claims in respect of pecuniary or non-pecuniary damage. Therefore, the Court makes no award in his favour (Rule 60 of the Rules of Court).

62. The second applicant made no claims in respect of pecuniary damage but claimed 40,000 euros (EUR) in respect of non-pecuniary damage. According to him, his unlawful conviction and imprisonment had caused him mental and physical suffering. Moreover, he had been stabbed while in prison, as a result of which he had needed medical care and his health had deteriorated.

63. The Government did not comment on the second applicant's claim.

64. The Court reiterates that it cannot speculate as to whether the outcome of proceedings would have been different if no violation of the Convention had taken place (see *Van Mechelen and Others v. the Netherlands* (Article 50), judgment of 30 October 1997, *Reports of Judgments and Decisions* 1997-VII, p. 2432, § 18). Nevertheless, the fact remains that the criminal proceedings against the applicants were not conducted in conformity with the Convention.

65. In so far as the second applicant is concerned, the Court finds that he has sustained damage which cannot be compensated by the finding of a violation. Making its assessment on an equitable basis, the Court awards the second applicant the sum of EUR 1,500 by way of compensation for non-pecuniary damage.

B. Costs and expenses

66. The applicants, who had been granted legal aid, did not make any additional claims for the costs and expenses incurred before the Court.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join the applications;
2. *Declares* the remainder of the applications admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the second applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,500 (one thousand and five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Estonian kroons at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the second applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President