



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

FOURTH SECTION

CASE OF MARCHOWSKI v. POLAND

(Application no. 10273/02)

JUDGMENT

STRASBOURG

8 July 2008

FINAL

08/10/2008

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 Marchowski v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Ján Šikuta,

Päivi Hirvelä,

Ledi Bianku, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 17 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 10273/02) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Mr Jacek Marchowski (“the applicant”), on 26 February 2001.

2. The applicant, who had been granted legal aid, was represented by Mr A. Patela, a lawyer practising in Kraków. 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, that his detention on remand had exceeded a “reasonable time” within the meaning of Article 5 § 3 of the Convention and that he could not participate in the proceedings relating to the lawfulness of his detention contrary to Article 5 § 4.

4. On 30 May 2006 the Court declared the application partly inadmissible and decided to communicate the complaints under Article 5 §§ 3 and 4 and Article 3 of the Convention to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1965 and lives in Kraków, Poland.

A. Criminal proceedings against the applicant

6. On 15 January 1997 the applicant was arrested on suspicion of homicide.

7. On 16 January 1997 the applicant was brought before the Kraków District Court (*Sąd Rejonowy*). The court remanded him in custody on charges of assault occasioning death. The court held that there was a reasonable suspicion that the applicant had committed the offences with which he had been charged. In addition, the detention was necessary to ensure the proper course of the proceedings. The court also referred to the likelihood that a severe sentence could be imposed on the applicant.

8. During the investigation the applicant's detention was extended twice. The last of the relevant decisions was given on 9 July 1997 by the Kraków Court of Appeal (*Sąd Apelacyjny*) and extended the applicant's detention until 31 August 1997. The courts considered that the grounds originally given for his detention were still valid.

9. Between January and August 1997 the applicant made several applications for release. In particular, he asked to be released on bail. All those applications were dismissed, both at first instance and on appeal. The applicant stressed that in view of the witness testimonies his detention lacked any reasonable basis. In addition, his son had just started school and it was necessary for him to have regular contact with his father.

10. Neither the applicant nor his lawyer participated in any of the sessions in connection with his applications for release.

11. On 28 August 1997 the Kraków Regional Prosecutor lodged a bill of indictment with the Kraków Regional Court (*Sąd Wojewódzki*). The applicant was indicted on charges of participation in a fight resulting in homicide and using false documents. The bill of indictment included four other persons. The prosecutor stated that evidence from sixty-one witnesses needed to be obtained.

12. At a session held on 18 November 1997 the Kraków Regional Court extended the applicant's detention until 30 April 1998. The court relied on the gravity of the charges against the applicant. It further stressed that the charges concerned five persons. In addition, extradition proceedings were pending against one of the accused. The court still needed to obtain evidence from sixty-one witnesses including three anonymous witnesses. Neither the applicant nor his lawyer was present at this session. An appeal

by the applicant against this decision was dismissed on 18 December 1997 by the Kraków Court of Appeal. The court referred to the gravity of the charges against the applicant and the need to secure the proper conduct of the proceedings. In addition, the applicant's arguments that he needed to take care of his family had been groundless since before his arrest he had not lived with them.

13. The trial began on 23 March 1998. Between 23 March 1998 and 13 July 1998 the Krakow Regional Court held thirteen hearings.

14. At hearings held on 14 April 1998 and 25 June 1998 the Kraków Regional Court extended the applicant's detention until 30 June and 13 July 1998 respectively.

15. On 13 July 1998 the Kraków Regional Court gave judgment and sentenced the applicant to seven years' imprisonment. It also extended the applicant's detention until 31 December 1998. It pointed out that in view of the behaviour of the applicant and the other co-accused it had been necessary to secure the proper conduct of the proceedings.

16. On 1 October 1998 the applicant appealed against this judgment.

17. On 28 December 1998 the Kraków Court of Appeal gave a decision and extended the applicant's detention until 15 February 1999.

18. On 14 January 1999 the Kraków Court of Appeal quashed the first-instance judgment and remitted the case.

19. On 10 February 1999 the Krakow Regional Court again extended the applicant's detention, this time until 30 June 1999. On 28 June 1999 the Kraków Regional Court extended the detention of the applicant and three other co-defendants until 30 September 1999. The court held that given the evidence collected so far by the courts there was a high degree of likelihood that the applicant had committed the offence with which he had been charged. In addition, there was a high risk of his absconding or going into hiding.

20. On 9 September 1999 the Kraków Regional Court gave a decision and remitted the case to the prosecution authorities in order to complete the investigation. The prosecutor appealed. On 13 October 1999 the Court of Appeal quashed the first-instance decision and ordered the Regional Court to proceed with the case.

21. Meanwhile, on 22 September 1999 the Kraków Regional Court again extended the detention of the applicant and the other co-defendants, this time until 30 December 1999. The court referred to the reasons given previously and held that they were still valid. In particular, there were good grounds for believing that if released the defendants might commit another serious crime. The applicant appealed, submitting that as the case had been transferred to the prosecution authorities, it would indicate that there was no "high probability that he had committed the crime with which he had been charged" since the prosecution needed to collect more evidence. On

13 October 1999 the Kraków Court of Appeal upheld the first-instance decision.

22. On 22 December 1999 the Kraków Regional Court gave a decision and extended the detention of the applicant and four other co-defendants until 29 February 2000. The court held that the grounds for keeping them in detention were still valid. In particular, there was a need to hear evidence from additional witnesses. At a hearing held on 25 February 2000 the court extended the applicant's detention until 30 April 2000. The court repeated the reasons given previously. On 25 April 2000 the Regional Court again extended the applicant's detention until 30 June 2000. On 17 May 2000 the Kraków Court of Appeal dismissed the applicant's appeal against this decision. The court stressed that there was a likelihood that the charges against the applicant and his co-defendants would be proved and that the interests of the proper administration of justice justified the continuation of the detention. The applicant's lawyer was present at this session.

23. On 30 May 2000 the Kraków Regional Court gave judgment and sentenced the applicant to five years' imprisonment. It also extended the applicant's detention. On 1 June 2000 the applicant lodged an appeal against the decision to extend his detention. On 21 June 2000 the Court of Appeal dismissed his appeal. The applicant's lawyer was present at the session.

24. On 10 October 2000 the Kraków Regional Court extended the applicant's detention until 10 January 2001. On 15 November 2000 the Court of Appeal dismissed the applicant's interlocutory appeal and upheld the decision to extend his detention. The applicant's lawyer was present at both court sessions. At a session held on 4 January 2001 the Kraków Court of Appeal extended the applicant's detention and dismissed his application for release. The applicant's lawyer was present at this session. At yet another session, held on 8 February 2001, the Court of Appeal dismissed the applicant's request for release. The applicant's lawyer was present at that session.

25. On 1 March 2001 the Kraków Court of Appeal gave judgment and acquitted the applicant. The court also ordered that the applicant be released from detention.

26. On 11 May 2001 the prosecutor lodged a cassation appeal against this judgment.

27. On 10 December 2001 the Supreme Court quashed the first- and second-instance judgments and remitted the case to the Kraków Regional Court.

28. On 29 June 2005 the Kraków Regional Court gave judgment and sentenced the applicant to four years' imprisonment.

29. On 1 July 2005 the applicant asked to be served with a copy of the judgment together with the reasoning. It was served on him on 14 October 2005. The Regional Court informed the applicant that the delay in serving the judgment was caused by the complexity of the case and the number of defendants involved.

30. The applicant appealed against the judgment of 29 June 2005.

31. At a hearing held on 25 January 2006 the Court of Appeal gave judgment. It quashed the Regional Court's judgment and remitted the case.

32. It would appear that the proceedings are pending before the Kraków Regional Court.

B. The alleged solitary confinement

33. The applicant claimed in his initial submissions that during the whole period of his detention on remand he had been held in solitary confinement.

34. According to the information provided by the Government, the applicant was placed in three different detention centres throughout the period of his detention: the Wadowice Prison, the Krakow Detention Centre and the Wołów Prison.

35. On 27 November 1997 the applicant, who had been classified as a difficult detainee, was placed separately in a cell for two prisoners until July 1998.

36. On 19 October 1998 the Nowy Sącz Prison penitentiary commission decided to include the applicant in the category of "dangerous" detainees, the so called "Ds". The commission considered that the applicant had been aspiring to a role of an informal leader of prison subculture thus posing a potential risk of a riot in prison. The applicant lodged an interlocutory appeal against this decision. On 24 November 1998 the Wrocław Regional Court upheld this decision.

37. On 21 October 1998 the applicant was transferred to the Wołów Prison, where he was placed alone in a cell with an area of 4.64 square metres, designated for dangerous inmates. The applicant had the right to an hour's exercise every day. He was able to have visits from his family and his lawyer.

38. The applicant was subsequently transferred to the Kraków Detention Centre on 1 February 1999. He was placed in a separate cell with an area of 6.29 square metres. He could not participate in collective sport or cultural activities. However, he could have exercise under the supervision of two guards. Books were provided in his cell, where he could also listen to the prison radio. He received visits from his common law wife, his son, his sister and other members of the family.

39. On 25 March 1999 the Kraków Regional Court again upheld the decision of the penitentiary commission. The applicant's lawyer lodged an interlocutory appeal. On 23 April 1999 the Regional Court dismissed the appeal.

40. On 19 April 1999 and 19 July 1999 the penitentiary commission gave decisions confirming the applicant's status as a dangerous detainee. He did not appeal against these decisions.

41. On 30 August 1999 the penitentiary commission decided not to extend the applicant's classification as a dangerous detainee. It is not clear whether the conditions of the applicant's detention changed following this decision.

42. On 15 June 2000 the applicant was transferred to the Nowy Sącz Prison, where he was placed in a cell for three prisoners and was not subjected to pre-trial detention in conditions of solitary confinement.

II. RELEVANT DOMESTIC LAW AND PRACTICE

43. The relevant domestic law and practice concerning the imposition of detention on remand (*aresztowanie tymczasowe*), the grounds for its extension, release from detention and rules governing other "preventive measures" (*środki zapobiegawcze*) are stated in the Court's judgments in the cases of *Kudła v. Poland* [GC], no. 30210/96, §§ 75-79, ECHR 2000-XI; *Bagiński v. Poland*, no. 37444/97, §§ 42-46, 11 October 2005; and *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 August 2006.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

44. The applicant complained that during the period of his detention on remand he was detained in conditions amounting to solitary confinement. He relied on 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. The parties' submissions

45. The Government argued that only during the period between 19 October 1998 and 30 August 1999, that is when the applicant was classified as a dangerous detainee, could the conditions of his detention be regarded as similar to solitary confinement. While the applicant had appealed against the penitentiary commission's decision of 19 October 1998, he had failed to lodge appeals against subsequent decisions of 19 April 1999 and 19 July 1999. He could have also submitted motions and complaints to authorities executing criminal sentences.

46. The Government further stressed that the conditions of the applicant's detention had not amounted to sensory or total social isolation but rather to relative social isolation. Although his opportunities to contact other prisoners had been limited he had received visits from his family and friends.

47. The applicant contested the Government's submissions in general.

B. The Court's assessment

48. Even assuming that the domestic remedies were exhausted, the Court points out that it is not open to it to set aside the application of the six-month rule solely because a respondent Government have not made a preliminary objection based on that rule. It reiterates that the six-month rule, in reflecting the wish of the Contracting Parties to prevent past decisions being called into question after an indefinite lapse of time, serves the interests not only of the respondent Government but also of legal certainty as a value in itself. It marks out the temporal limits of supervision carried out by the organs of the Convention and signals both to individuals and to State authorities the period beyond which such supervision is no longer possible (see *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I).

49. The Court considers that the six-month time-limit set down by Article 35 § 1 of the Convention began to run on an unknown date after 30 August 1999 and at the latest on 15 June 2000, being the end of the situation of which the applicant complains. Since the application was introduced on 26 February 2001, it was presented more than six months after the date on which the relevant period to be considered under Article 3 came to an end.

50. It follows that this complaint is inadmissible for non-compliance with the six-month rule set out in Article 35 § 1 of the Convention, and must be rejected pursuant to Article 35 § 4.

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

51. The applicant complained that the length of his detention on remand had been excessive. He relied on Article 5 § 3 of the Convention, which, in so far as relevant, reads as follows:

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

52. The Government contested that argument.

A. Admissibility

53. The Government argued that the applicant had failed to exhaust the available domestic remedies, since he had not appealed against some of the decisions extending his detention.

54. The Court observes that it is true that the applicant did not appeal against the decisions referred to by the Government. However, he lodged appeals against the other decisions extending his detention. He also requested on several occasions that his detention be replaced by a more lenient preventive measure. The Court has already considered that those remedies, namely an appeal against a detention order and/or a request for release, whether submitted to the prosecutor or to the court, depending on the stage of the proceedings, and also an appeal against a decision to extend detention, serve the same purpose under Polish law. Their objective is to secure a review of the lawfulness of detention at any given time of the proceedings, both in their pre-trial and trial stage, and to obtain release if the circumstances of the case no longer justify continued detention (see *Iwańczuk v. Poland* (dec.), no. 25196/94, 9 November 2000, and *Wolf v. Poland*, nos. 15667/03 and 2929/04, § 78, 16 January 2007). It follows from the Court’s case-law that the applicant is not required to appeal against each and every decision extending his detention (see, *a contrario*, *Bronk v. Poland* (dec.), no. 30848/03, 11 September 2007). Furthermore, the Court

considers that the applicant was not required to appeal against all refusals to release him in order to comply with the requirement of exhaustion of domestic remedies. It follows that this complaint cannot be rejected for non-exhaustion of domestic remedies.

55. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Period to be taken into consideration

56. The applicant's detention started on 15 January 1997, when he was arrested on suspicion of homicide. On 13 July 1998 the Regional Court convicted him as charged.

57. From that date he was detained "after conviction by a competent court", within the meaning of Article 5 § 1 (a) and consequently that period of his detention falls outside the scope of Article 5 § 3 (see *Kudła*, cited above, § 104).

58. On 14 January 1999 the Court of Appeal quashed the applicant's conviction. Following that date his detention was again covered by Article 5 § 3. It continued until 30 May 2000 when the applicant was again convicted. On 1 March 2001 the Court of Appeal acquitted the applicant and released him from detention.

59. Accordingly, the period to be taken into consideration amounts to two years, ten months and fifteen days.

2. The parties' submissions

(a) The applicant

60. The applicant submitted that the unreasonable length of his pre-trial detention had been caused by delays in the trial and the fact that the case had been remitted on several occasions. In particular, the Court of Appeal had committed several procedural mistakes which resulted in the acquitting judgment being quashed. The fact that the case had been tried on four occasions by the court of first instance indicated that the authorities failed to demonstrate due diligence.

61. The applicant lastly argued that the pre-trial detention, initially justified by the domestic courts, had become unjustified with the lapse of time.

(b) The Government

62. The Government considered that the length of the applicant's pre-trial detention had satisfied the requirements of Article 5 § 3, in particular as it had been duly justified. The applicant had been charged with homicide. Thus, bearing in mind the seriousness of the crime and of the anticipated penalty, his detention had been justified by a requirement of public interest. In addition, there had been a risk of the applicant's obstructing the proceedings and tampering with the evidence. This risk was a strong one as the proceedings concerned an offence committed against the background of a struggle between two criminal groups, in one of which the applicant had played a leading role.

63. The Government were of the opinion that there existed relevant and sufficient grounds which justified continuation of the applicant's detention during the whole period at stake.

64. Furthermore, the applicant's detention had been subject to regular supervision by the courts. Throughout the entire period the authorities had given relevant and sufficient reasons for extending it.

65. Lastly, the national authorities had displayed due diligence when dealing with the applicant's case. In the Government's view the proceedings had been complex. Evidence obtained by the trial court came from approximately sixty witnesses, including three anonymous witnesses.

66. They concluded that no violation of Article 5 § 3 had occurred in the present case.

3. The Court's assessment

(a) General principles

67. The Court reiterates that the general principles regarding the right "to trial within a reasonable time or to release pending trial, as guaranteed by Article 5 § 3 of the Convention, were stated in a number of its previous judgements (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 110 *et seq.*, ECHR 2000-XI, and *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-..., with further references).

(b) Application of the above principles in the present case

68. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on three grounds, namely the serious nature of the offences with which he had been charged, the severity of the penalty to which he was liable, and the need to secure the proper conduct of the proceedings.

69. The Court accepts that the reasonable suspicion against the applicant of having committed a serious offence could initially warrant his detention.

Also, the need to secure the proper conduct of the proceedings, in particular the process of obtaining evidence from witnesses, constituted valid grounds for the applicant's initial detention.

70. However, with the passage of time, those grounds became less and less relevant. The Court must then establish whether the other grounds adduced by the courts – namely, the severity of the anticipated sentence – were “sufficient” and “relevant” (see *Kudla*, cited above, § 111).

71. According to the authorities, the likelihood of a severe sentence being imposed on the applicant created a presumption that the applicant would obstruct the proceedings. However, the Court would reiterate that, while the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending, the gravity of the charges cannot by itself justify long periods of detention on remand (see *Michta v. Poland*, no. 13425/02, § 49, 4 May).

72. Having regard to the foregoing, the Court concludes that the grounds given by the domestic authorities could not justify the overall period of the applicant's detention.

73. Although the above finding would normally absolve the Court from assessing whether the proceedings were conducted with special diligence, in the present case the Court cannot but note that even though the applicant was indicted on 28 August 1997, it took the trial court seven months to hold the first hearing (see paragraphs 11 and 13 above). In addition, the case was remitted to the Regional Court on three occasions and after almost ten years of proceedings they are still pending before the court of first instance (see paragraphs 18, 27 and 31 above).

74. In the circumstances, the Court finds that the authorities failed to act with all due diligence in handling the applicant's case.

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

III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

76. The applicant complained under Article 5 § 4 of the Convention about the procedure relating to the extension of his pre-trial detention, in particular that he and his lawyer had not attended the sessions at which his detention was extended.

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

A. The parties' submissions

77. The Government submitted that, taking into consideration all the proceedings devoted to the review of the lawfulness of the applicant's pre-trial detention, the principles guaranteed in Article 5 § 4 of the Convention had been respected in the present case. From 1 September 1998 onwards the applicant's lawyer had been entitled to participate in all sessions at which his interlocutory appeals against decisions extending the applicant's detention might have been examined.

78. The applicant disagreed.

B. The Court's assessment

79. The Court reiterates that the principles relevant in the present case which emerge from the Court's case-law on Article 5 § 4 have been stated in a number of its previous judgments (see for instance, *Assenov and Others v. Bulgaria*, judgment of 28 October 1998; *Telecki v. Poland*, (dec.), no. 56552/00, 3 July 2003; *Celejewski v. Poland*, no. 17584/04, § 47, 4 May 2006; and *Depa v. Poland*, no. 62324/00, § 49, 12 December 2006).

80. Turning to the circumstances of the instant case, the Court firstly notes that it cannot examine events complained of by the applicant which took place before 26 August 2000, that is more than six months before the date on which this complaint was submitted to the Court (see *Walker* (dec.), cited above).

81. The procedure for the extension of the applicant's pre-trial detention during the period under consideration was based on Article 249 § 5 of the Code of Criminal Procedure, which requires the domestic courts to inform the lawyer of a detained person of the date and time of court sessions at which a decision is to be taken concerning extension of detention during judicial proceedings, or an appeal against a decision to impose or extend detention is to be considered. It was open to the lawyer to attend such sessions.

82. The Court notes that, as it appears from the Government's submissions, at least on one occasion the decision to extend the applicant's detention was given at a public hearing at which the applicant's lawyer was present (see paragraphs 23 and 24 above). The applicant has not advanced any evidence that would establish that the authorities departed from the general rule and failed to summon the lawyer to other sessions at which the applicant's detention was extended. As to the applicant's own attendance, the Court reiterates that in cases where characteristics pertaining to an applicant's personality and level of maturity and reliability are of importance in deciding on his dangerousness, Article 5 § 4 requires an oral hearing in the context of an adversarial procedure involving legal representation (see *Waite v. the United Kingdom*, no. 53236/99, § 59,

10 December 2002). On the basis of the material before it the Court considers, however, that in the present case the questions of assessment of the applicant's character or mental state did not arise. Recalling that it was open to his lawyer to attend, the applicant's personal attendance at all of the sessions at which his detention had been extended was therefore not required.

83. In view of the above, the Court is of the opinion that the proceedings in which the extension of his detention was examined satisfied the requirements of Article 5 § 4 (see *Telecki v. Poland* and *Celejewski v. Poland*, cited above).

84. It follows that this complaint must 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

85. 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

86. The applicant claimed 250,000 US dollars (USD) in respect of non-pecuniary damage.

87. The Government contested this claim.

88. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him 1,500 euros (EUR) under this head.

B. Costs and expenses

89. The applicant, who received legal aid from the Council of Europe, did not submit any additional claim for costs and expenses.

C. Default interest

90. 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 complaint concerning the length of the applicant's detention on remand admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds*
 - (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 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable on the above amount to be converted into Polish zlotys at the rate applicable at the date of the 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President