



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

FIRST SECTION

CASE OF BRAJOVIĆ-BRATANOVIĆ v. CROATIA

(Application no. 9224/06)

JUDGMENT

STRASBOURG

9 October 2008

FINAL

09/01/2009

This judgment may be subject to editorial revision.

In the case of Brajović-Bratanović v. Croatia,

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

Christos Rozakis, *President*,

Nina Vajić,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 18 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 9224/06) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a national of the United States of America, Ms Sofija Brajović-Bratanović (“the applicant”), on 16 February 2006.

2. The Croatian Government (“the Government”) were represented by their Agent, Mrs Š. Stažniik.

3. On 18 September 2007 the Court decided to give notice of the application 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**

4. The applicant was born in 1946 and lives in Bethesda, the United States of America.

5. The applicant owns a flat in Cavtat, Croatia. In September 1995 Parliament passed a law governing the temporary use of property of persons who had left Croatia - Temporary Takeover and Management of Certain Property Act (*Zakon o privremenom preuzimanju i upravljanju određenom imovinom* - hereinafter the “Property Takeover Act”), which allowed municipalities to temporarily accommodate other persons in such property.

6. In 1992 R., a policeman, forcibly moved into the applicant's flat in Cavtat, Croatia. On 25 September 1995 the Konavle Housing Commission granted him refugee status and legalised his occupation of the applicant's flat. On 30 January 2002 the applicant applied to the Housing Commission for repossession of her property.

7. On 11 January 2002 the applicant instituted civil proceedings before the Dubrovnik Municipal Court seeking R.'s eviction. On 27 February 2002 the claim was declared inadmissible for lack of jurisdiction. The applicant appealed.

8. On 29 August 2002 the applicant lodged a request with the Ministry of Public Works, Reconstruction and Construction seeking annulment of the decision authorising R. to occupy her flat.

9. The judgment of the Dubrovnik Municipal Court of 27 February 2002 was quashed by the Dubrovnik County Court on 30 August 2002 and the case was remitted to the Municipal Court for a fresh trial.

10. On 1 October 2002 the Amendments to the Act on Areas of Special State Care (*Zakon o izmjenama i dopunama Zakona o područjima od posebne državne skrbi* – “the 2002 Amendments”) entered into force. They transferred the jurisdiction in the matter from the housing commissions (which were abolished) to the Ministry of Public Works, Reconstruction and Construction (*Ministarstvo za javne radove, obnovu i graditeljstvo* – “the Ministry”).

11. On 25 October 2003 the Dubrovnik Municipal Court upheld the claim and ordered R.'s eviction. R. appealed.

12. On 12 December 2003 the Ministry set aside the Property Takeover Commission's decision authorising R. to occupy the applicant's flat but also stated that R. had the right to housing under section 7 of the Act on Areas of Special State Concern.

13. The judgment of the Dubrovnik Municipal Court of 25 October 2003 was quashed by the County Court on 17 February 2005 on the ground that no alternative accommodation had been provided to R. Accordingly, the case was returned to the Municipal Court for further examination. On 12 May 2006 the applicant lodged an application with the Supreme Court complaining about the length of the proceedings. In a letter of 26 May 2006 the Supreme Court instructed the Dubrovnik Municipal Court to speed up the proceedings.

14. On 31 May 2006 the Municipal Court again granted the applicant's claim and ordered R.'s eviction. R. appealed against this judgment to the Dubrovnik County Court. While the case was pending there the applicant once more applied to the Supreme Court complaining about the length of the proceedings. In a letter of 11 September 2006 the Supreme Court instructed the County Court to speed up the proceedings and adopt a judgment.

15. On 2 October 2006 the County Court again quashed the judgment of the Municipal Court and accordingly the latter was once more required to examine the applicant's claims. In a judgment of 27 March 2007 the Municipal Court, as in its previous judgments, found in favour of the applicant. R. appealed against this judgment and the appeal is at present pending before the Dubrovnik County Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The relevant legislation

1. *The Property Takeover Act*

16. The following are the relevant sections of the Property Takeover Act (*Zakon o privremenom preuzimanju i upravljanju određenom imovinom*, Official Gazette nos. 73/1995 and 7/1996):-

Section 2(2) transferred the property belonging to persons who had left Croatia after 17 October 1990 to the care and control of the State.

Section 5, *inter alia*, authorised the property takeover commissions to allow temporary occupation of property under section 2 by refugees, displaced persons or persons whose property had been destroyed in the war.

2. *The Programme for Return and the Termination Act*

17. Section 9 of the Programme for Return (*Program povratka i zbrinjavanja prognanika, izbjeglica i raseljenih osoba*, Official Gazette no. 92/1998) provided as follows:

“Persons with Croatian [citizenship] documents who are owners of property in Croatia in which other persons are temporarily accommodated may apply to the municipal housing commission seeking repossession of their property. The commission shall inform the owner within five days about the status of his property. Relying on proof of ownership, the commission shall set aside any previous decision allowing the temporary accommodation of other persons and order the temporary occupier to vacate the premises. The commission shall serve a written decision on the owner and on the temporary occupier within seven days. The decision shall contain a time-limit for eviction and an offer of alternative accommodation for the temporary occupier in a house or flat under state ownership.

...

If a temporary occupier fails to vacate the premises within the fixed time-limit, the commission shall institute eviction proceedings in the competent municipal court within seven days. The court shall apply the provisions concerning summary procedure in civil matters. The court's decision shall be immediately enforceable. An appeal shall not interfere with the enforcement proceedings or the repossession of the property by the owner.”

18. Section 2(3) and 2(4) of the Termination Act (*Zakon o prestanku važenja Zakona o privremenom preuzimanju i upravljanu određenom imovinom*, Official Gazette no. 101/1998) provided that the Programme for Return applied to proceedings concerning the temporary use, management and control of the property of persons who had left Croatia and that such proceedings were to be conducted by housing commissions in the first instance and by municipal courts in the second instance. They were required to apply the Administrative Procedure Act.

3. *The Act on Areas of Special State Concern and related subordinate legislation*

19. Sections 7, 9 and 17 of the Act on Areas of Special State Concern (*Zakon o područjima od posebne državne skrbi*, Official Gazette nos. 44/1996, 57/1996 (errata), 124/1997, 73/2000, 87/2000 (errata), 69/2001, 94/2001, 88/2002, 26/2003 (consolidated text), 42/2005), as amended by the 2002 Amendments, gave a temporary occupier a right to housing.

Section 24 (enacted on 14 July 2000, published in the Official Gazette no. 73 of 21 July 2000, came into force on 29 July 2000) obliges the Ministry to secure alternative accommodation for the occupier within six months of the owner's request for the return of his or her property, failing which the owner is entitled to seek the conclusion of a lease agreement by which the occupier leases the premises and the Ministry pays the rent to the owner.

Section 27 obliges the Ministry to pay compensation for the damage sustained by an owner who applied for repossession of his or her property prior to 30 October 2002 but to whom the property was not returned by that date.

20. The Decision on the Level of Compensation Due to Owners for Damage Sustained (*Odluka o visini naknade vlasnicima za pretrpljenu štetu*, Official Gazette no. 68/2003) establishes the amount of that compensation at seven Croatian kunas (HRK) per square metre.

4. *The Property Act*

21. The following are the relevant sections of the Property Act (*Zakon o vlasništvu i drugim stvarnim pravima*, Official Gazette nos. 91/1996, 73/2000 and 114/2001):-

Section 161(1) entitles the owner of property to recover it from anyone who is in possession of it.

Section 163(1) allows anyone entitled to retain possession (that is, if he or she has a right of possession) to refuse to return the property to its owner.

5. *The Courts Act*

22. The relevant part of the Courts Act (*Zakon o sudovima*, Official Gazette no. 150 of 21 December 2005, entered into force on 1 January 2006) reads as follows:

Section 4

“(1) In the determination of his rights and obligations or of a criminal charge against him or her, everyone is entitled to a fair hearing within a reasonable time by an independent and impartial tribunal established by law.

...”

Section 27

“(1) A party to the judicial proceedings ... may lodge a request for the protection of the right to a hearing within a reasonable time with a court hierarchically superior [to the one conducting the proceedings].

...”

Section 28

“(1) Where the court deciding a request under section 27 finds it founded it shall set a time-limit within which the competent court must decide the case on the merits ... and shall also assess appropriate compensation for the applicant for the violation of his or her right to a hearing within a reasonable time.

...

(3) An appeal lies to the Supreme Court against a decision on a request for protection of the right to a hearing within a reasonable time. ... a constitutional complaint may be lodged against the Supreme Court’s decision.”

6. *The Constitutional Act on the Constitutional Court*

23. The relevant part of the Constitutional Act on the Constitutional Court (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette no. 49/2002 of 3 May 2002 – “the Constitutional Court Act”) reads as follows:

Section 63

“(1) The Constitutional Court shall examine a constitutional complaint whether or not all legal remedies have been exhausted if the competent court fails to decide a claim concerning the applicant’s rights and obligations or a criminal charge against him or her within a reasonable time ...

(2) If a constitutional complaint ... under paragraph 1 of this section is upheld, the Constitutional Court shall set a time-limit within which the competent court must decide the case on the merits...

(3) In a decision issued under paragraph 2 of this section, the Constitutional Court shall assess appropriate compensation for the applicant for the violation of his or her constitutional rights ... The compensation shall be paid out of the State budget within three months from the date on which a request for payment is lodged.”

B. The Supreme Court’s practice

24. In a series of decisions (for example, in cases nos. Rev-291/1999-2 of 11 September 2002, Rev-1157/02-2 of 21 November 2002 and Rev-1289/00-02 of 6 November 2003), starting with decision no. Rev-574/02-2 of 23 April 2002 the Supreme Court interpreted the relationship between the Property Act and the Termination Act as follows:

“The jurisdiction to decide on an owner’s application for repossession conferred on the administrative authorities under the Termination Act does not exclude ordinary court jurisdiction in such matters under the Property Act. Therefore, a civil action for repossession, based on section 161(1) of the Property Act and brought in a court against a temporary occupier by an owner whose property had been taken over under the Takeover Act, should be decided on its merits rather than declared inadmissible for lack of jurisdiction.”

25. In its decisions nos. Rev-967/00-2 of 30 September 2004 and Rev-1444/02-2 of 29 June 2004 the Supreme Court gave a further interpretation of the relationship between the Property Act and the Termination Act as well as of the Programme for Return:

“The temporary occupier’s right to use the owner’s property does not cease merely for the reason that a housing commission has set aside the decision allowing him or her to do so. This is because the duty to return the property to its owner is conditional upon the duty of the State to provide alternative accommodation for the temporary occupier.

It follows that the temporary occupier is not obliged to compensate the owner for the use of his or her property since, before being provided with alternative accommodation, he or she remains in bona fide possession.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

26. The applicant complained that her prolonged inability to repossess her flat in Cavtat had violated her right to peaceful enjoyment of her possessions as provided in Article 1 of Protocol No. 1, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

27. The Government contested that argument.

A. Admissibility

1. *Compatibility ratione temporis*

28. The Government firstly maintained that the domestic authorities were responsible only for acts, decisions and events which had occurred after 5 November 1997, the date on which the Convention had entered into force in respect of Croatia. Therefore, the interference with the applicant's rights caused by legislation enacted before the entry into force of the Convention in respect of Croatia fell outside the Court's competence *ratione temporis*.

29. The applicant submitted that the alleged violations had continued after the date of ratification. Accordingly, in her view the Court had competence to examine them.

30. The Court observes that in the present case the applicant's complaint concerns a continuous situation. Accordingly, the Court is competent *ratione temporis* to examine that complaint in so far as it concerns the continuation of this situation after 5 November 1997.

2. *Exhaustion of domestic remedies*

31. The Government further submitted that the applicant had not exhausted domestic remedies in that she had failed to seek repossession of the flat from the relevant Ministry and to seek damages pursuant to section

27(4) of the Act on Areas of Special State Concern. She had also failed to seek, under section 24 of the same Act, the conclusion of a lease agreement between herself and the Ministry by which the flat in question would be let to R and the Ministry would pay the rent until alternative accommodation was found for him.

32. The applicant firstly submitted that she had sought repossession of her flat and that the Ministry had actually issued a decision to that effect but had afterwards failed to secure the return of the flat to her.

33. The Court considers that the Government's objection as to the exhaustion of domestic remedies raises issues which are closely linked to the merits of the applicant's complaint under Article 1 of Protocol no. 1 to the Convention. Thus, in order not to prejudge the latter the Court decides to join this issue to the merits of the case. Furthermore, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that it is not inadmissible on any other ground. It must therefore be declared admissible.

B. Merits

34. The applicant argued that the prolonged period for which her property had been occupied by R., although he was neither a refugee nor a displaced person, had no justification.

35. The Government argued that the interference in question was based on the Property Takeover Act and that it had been aimed at protecting property left behind by persons who had left Croatia during the Homeland War and securing housing for a large number of persons in need, which was a consequence of the war. They further asserted that the measure taken was proportionate to the legitimate aim pursued.

36. The Court notes that it is not disputed that there has been an interference with the applicant's right to property as her flat was allocated to another person and she has been unable to use it for a prolonged period of time.

37. The Court further notes that the applicant was not deprived of her property title. Therefore, the interference complained of constituted a control of use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 46 and 48, ECHR 1999-V, and *Scollo v. Italy*, judgment of 28 September 1995, Series A no. 315-C, p. 52, § 27). In order to comply with the requirements of the second paragraph, it must be shown that the measure constituting the control of use was lawful, that it was "in accordance with the general interest" and that there existed a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see *Bimer*, cited above, § 52).

38. In order to ascertain whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights, the Court must examine whether by reason of the State's inaction the applicant had to bear a disproportionate and excessive burden (see *Broniowski v. Poland* [GC], no. 31443/96, § 150, ECHR 2004-V, and *Kirilova and Others v. Bulgaria*, cited above, § 106).

39. The Court accepts the Government's assertion, undisputed by the applicant, that the interference in question was based in law, namely the Property Takeover Act, and that its legitimate aim was to answer an increase in housing needs caused by the Homeland War in Croatia.

40. The Court thus accepts that housing persons in need in property left behind by persons who had left Croatia during the war may be regarded as a legitimate interest of the State. Furthermore, the system which allows occupiers to remain in the abandoned property before they have been provided with adequate housing is not in itself in contradiction with the guarantees contained in Article 1 of Protocol No. 1, provided that it ensures sufficient safeguards for the protection of the applicant's property rights (see, *mutatis mutandis*, *Saratlić v. Croatia*, (dec.) no. 35670/03, 24 October 2006).

41. The Court notes that the occupier of the applicant's flat forcibly moved into it in 1992, thus initially occupying it without any legal ground. However, his position was remedied in September 1997 when the Konavle Housing Commission authorised his occupation. The Court notes that the parties agree that R., the occupier, was not a refugee or a displaced person but a serving policeman. In January 2002 the applicant sought repossession of her flat, firstly from the Housing Commission which had authorised R. to occupy her flat and secondly by bringing an action in the Dubrovnik Municipal Court for R.'s eviction. While the Housing Commission remained silent, the civil proceedings for eviction are still pending.

42. The Court notes further that in August 2002 the applicant also asked the relevant Ministry to annul the decision authorising R. to occupy her flat. While it is true that in December 2003 the Ministry did annul the said decision, it also established R.'s right to housing, which prevented the applicant from having her flat returned to her since no alternative accommodation has so far been provided to R.

43. While the Court accepts that the initial placement of persons in need of housing in another's abandoned property during the war and for a certain period after the war might be seen as justified, it has difficulties in finding justification for the occupation of the applicant's flat for such a long period, particularly in view of the fact that R. is not and has never been a refugee or a displaced person. In this connection the Court notes that after the war in Croatia had ended in 1995 the State has had ample time and opportunity to secure proper housing for R. Furthermore, the Court notes that even after

the applicant sought repossession of her property a period of more than six years has elapsed so far and that no pressing need has been made out such as to require R.'s further occupation of the applicant's flat. The Court therefore finds that the applicant's prolonged and continuing inability to recover possession of her flat has placed a disproportionate individual burden on her. In these circumstances none of the remedies relied on by the Government is effective because none is aimed at the repossession of her flat by the applicant. The Court therefore dismisses the Government's objection as regards the applicant's failure to exhaust domestic remedies and finds that the foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 1 of Protocol. No. 1 to the Convention.

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

44. The applicant complained about the length of the civil proceedings. She relied on Article 6 § 1 of the Convention, the relevant part of which read as follows:

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

45. The Government contested that argument.

46. The Court considers that the period to be taken into consideration began on 11 January 2002 when the applicant brought her civil action in the Dubrovnik Municipal Court, seeking R's eviction from her flat. The proceedings are still pending. Thus, they have so far lasted about six years and eight months at two levels of jurisdiction.

A. Admissibility

47. The Government argued that the applicant had not exhausted domestic remedies in respect of the length of proceedings under the Courts Act and the Constitutional Court Act.

48. The applicant asserted that she had twice applied to the Supreme Court about the length of proceedings, but to no avail.

49. The Court reiterates that as of 20 March 2002 an effective domestic remedy in respect of the length of pending civil proceedings has been introduced in Croatia: a constitutional complaint to the Constitutional Court (see *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII). Furthermore, as of 1 January 2006 additional avenues for complaints about the length of pending proceedings were opened up by the Courts Act under which a complaint in respect of the length of proceedings is to be lodged with a court hierarchically superior than the one before which the proceedings are pending. At the same time a constitutional complaint has

remained the ultimate resort concerning the length of proceedings pending at national level.

50. The Court notes that the applicant twice applied to the Supreme Court complaining about the length of the civil proceedings she had instituted before the national courts seeking R.'s eviction. However, the Supreme Court did not issue any formal decision on the applicant's complaint. Instead, both times the Supreme Court reacted by a letter addressed in the first instance to the Dubrovnik Municipal Court and in the second to the Dubrovnik County Court, instructing them to speed up the proceedings. In these circumstances the applicant was not in a position to lodge a constitutional complaint against the Supreme Court's decision since no such decision has been issued and a constitutional complaint cannot be lodged against a letter (see, *mutatis mutandis*, *Štitić v. Croatia*, no. 29660/03, § 27, 8 November 2007). Hence, the Government's objection must be rejected.

51. The Court further 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 ground. It must therefore be declared admissible.

B. Merits

52. The applicant argued that although three judgments had already been adopted by the first-instance court, her case had not been finally determined.

53. The Government replied that the case was complex and not urgent. They further asserted that the domestic courts had been diligent in processing the case.

54. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

55. The Court notes that although in the proceedings at issue there have been no substantial periods of inactivity and three judgments have so far been adopted on the merits, it cannot be said that the proceedings have complied with the reasonable-time requirement because the first-instance judgment, upholding the applicant's claim, has been quashed twice on appeal, both times on the ground that no alternative accommodation had been secured for R. The Court further notes that the proceedings are still pending, at present before the appellate court, and that the Government have not shown that alternative accommodation for R. has been found, which has so far delayed the final resolution of the applicant's case.

56. In view of the above considerations, the Court concludes that there has been a breach of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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

58. The applicant claimed 35,000 euros (EUR) in respect of pecuniary and non-pecuniary damage. She argued that she had not been able to rent her flat and also that she had had to pay for accommodation during her holidays elsewhere since she had not been able to stay in her flat, which was situated on the coast. She also claimed the value of her property left in the flat, which had been lost.

59. The Government argued that the minimum monthly rent for a flat in Cavtat in the same location as the applicant’s flat, and measuring 45 square metres, was 1,000 Croatian kuna (HRK) and that the applicant would inevitably have had some maintenance expenses.

60. The Court considers that the most appropriate form of redress in respect of a violation of Article 1 of Protocol No. 1 is to ensure the applicant’s repossession of her flat (see, *mutatis mutandis*, *Reynbakh v. Russia*, no. 23405/03, §§ 34-35, 29 September 2005, and *Lukavica v. Croatia*, no. 39810/04, § 48, 5 July 2007). It therefore considers that the Government must secure, by appropriate means, the enforcement of the Ministry’s decision of 12 December 2003 in so far as it relates to the return of the applicant’s flat. The Court also considers that the applicant must have suffered pecuniary damage as a result of her lack of control over her flat and that the relevant period commenced in January 2002 when she first sought its repossession and has not yet ended. As regards the loss of rent, the Court firstly notes that the applicant already had accommodation and therefore it is reasonable to assume that she would have attempted to let the flat (see *Prodan v. Moldova*, cited above, § 72; *Popov v. Moldova (no. 1)* (just satisfaction), no. 74153/01, § 11, 17 January 2006; and *Radanović v. Croatia*, no. 9056/02, § 63, 21 December 2006). Having examined the parties’ submissions, the Court will take the amount specified in the Government’s submission as to the minimum rent for a flat of the same size and in the same location as the applicant’s flat as a reference point for assessing the loss suffered.

61. In making its assessment, the Court takes into account the fact that the applicant would inevitably have experienced certain delays in finding suitable tenants and would have incurred certain maintenance expenses in connection with the flat. She would have also been subjected to taxation (see *Prodan v. Moldova*, cited above, § 74, and *Popov v. Moldova (no. 1)* (just satisfaction), cited above, § 13). Having regard to the foregoing, and deciding on an equitable basis, the Court awards the applicant EUR 10,000 on account of pecuniary damage. As regards the loss of the applicant's personal belongings in the flat, the Court does not discern any causal link between the violation found and the pecuniary damage alleged. It therefore rejects this claim. The Court, however, also awards the applicant EUR 3,000 in respect of non-pecuniary damage on account of the excessive length of the proceedings, plus any tax that may be chargeable on these amounts to the applicant.

B. Costs and expenses

62. The applicant also claimed EUR 7,000 for the costs and expenses incurred before the domestic authorities.

63. The Government contested this claim.

64. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 5,000 for the proceedings before the national authorities, plus any tax that may be chargeable on that amount to the applicant.

C. Default interest

65. 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. *Joins* to the merits the Government's objection concerning the exhaustion of domestic remedies and rejects it;
2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
5. *Holds*
 - (a) that the respondent State shall secure, by appropriate means and within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the enforcement of the decision of the Ministry of Public Works, reconstruction and Construction of 12 December 2003;
 - (b) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 10,000 (ten thousand euros) in respect of pecuniary damage, plus any tax that may be chargeable on that amount to the applicant;
 - (ii) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount to the applicant;
 - (iii) EUR 5,000 (five thousand euros) in respect of costs and expenses, plus any tax that may be chargeable on that amount to the applicant;
 - (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President