



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

FIFTH SECTION

CASE OF FEŠAR v. THE CZECH REPUBLIC

(Application no. 76576/01)

JUDGMENT

STRASBOURG

13 November 2008

FINAL

06/04/2009

This judgment may be subject to editorial revision.

In the case of Fešar v. the Czech Republic,

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

Rait Maruste, *President*,
Karel Jungwiert,
Volodymyr Butkevych,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre,
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 14 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 76576/01) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Czech national, Jaromír Fešar (“the applicant”), on 20 July 2001.

2. The applicant was represented by Mr K. Kapias, a lawyer practising in Ostrava. The Czech Government (“the Government”) were represented by their Agent, Mr V.A. Schorm, from the Ministry of Justice.

3. The applicant complained, in particular, of the length of his detention during judicial proceedings and of the proceedings held before the Constitutional Court which had been required to determine the lawfulness of his continued detention.

4. By a partial decision of 15 November 2005 a Chamber of the former Second Section of the Court decided to adjourn the examination of the complaints concerning the length of the applicant’s continued detention and the length of the proceedings to challenge the lawfulness of the applicant’s detention, and to declare the remainder of the application inadmissible.

5. Subsequently, under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

6. On 1 April 2006 this case was assigned to the newly composed Fifth Section (Rule 25 § 1 and Rule 52 § 1 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1965 and lives in Bayreuth, Germany.

A. The criminal proceedings against the applicant

8. On 22 May 1996 the applicant was charged with attempted tax evasion under sections 8 § 1, 10 § 1 b) and 148 §§ 1 and 2 c) of the Criminal Code.

9. On 27 March 1997 the applicant and eight other persons, *inter alia* J.R., were officially indicted.

10. A main hearing before the Ostrava District Court (*okresní soud*) was scheduled as early as 28 April 1997 to be held in July 1997. It took place on 1 to 8 July 1997 and then on 17 July 1997. During the hearing of 3 July 1997 the applicant declared that he refused to attend further hearings; these then took place in his absence. The court requested a report from the prison doctor on the applicant's bizarre behaviour during the main hearing of 3 July 1997 and with regard to the report on the applicant's injury that occurred on 3 July 1997 in custody and to the report of 4 July 1997 on the use of a coercive measure against the applicant in custody due to his aggressiveness. In his report the prison doctor noted that the applicant was not able to attend the main hearings. It became necessary to carry out a psychological and psychiatric examination of the applicant, and the prison doctor did not recommend that the applicant attend the new main hearing. On 7 July 1997 the applicant's and J.R.'s criminal case was severed for separate consideration and decision.

11. On 22 July 1997 the applicant was moved to the prison hospital whence he was transported back to the custody prison on 4 September 1997.

12. On 20 August 1997 the Regional Court submitted the applicant's and J.R.'s criminal case to the Olomouc High Court (*Vrchní soud*) for the purpose of a decision on the regional prosecutor's complaint that concerned, *inter alia*, J.R.'s detention during judicial proceedings. The Regional Court's presiding judge asked the High Court for the file in order to make a copy for the applicant's and J.R.'s severed criminal case. According to the Government, the file was lent to the Regional Court on 28 November 1997. Therefore, between 20 August and 28 November 1997 the Regional Court did not have the relevant file at its disposal.

13. On 19 December 1997 the Ostrava Regional Court (*krajský soud*) transferred the applicant's and J.R.'s criminal case to the District Court as a court with jurisdiction *in rem* and local jurisdiction.

14. On 18 May 1998 the District Court convicted the applicant of tax evasion and sentenced him to eighteen months' imprisonment. On the same day, the applicant was released from custody.

15. On 13 August 1998 the Regional Court dismissed an appeal by the applicant against the District Court's judgment.

16. On 2 September 1998 the District Court approved the deduction of the applicant's pre-trial detention from his sentence.

B. The decisions concerning the applicant's detention during judicial proceedings

17. On 23 May 1996 the District Court remanded the applicant in custody under Article 67 b) of the Code of Criminal Procedure ("the CCP"), with backdated effect from 22 May 1996. The court held that there was a risk that the applicant would influence witnesses and his co-accused.

18. On 24 June 1996 the Regional Court upheld the detention order, stating that the applicant's detention was necessary, *inter alia*, in order to confront him with J.R., to interview the witnesses and eventually to confront the witnesses with the co-accused. The court found, therefore, that in this stage of the proceedings, the applicant's detention was justified under 67 b) of the CCP.

19. On 17 July 1996 the District Court rejected the applicant's first request for release, noting that the grounds for custody still persisted under Article 67 b) of the CCP. The court noted that other persons would be examined, which was supported by the content of the confrontation carried out between the applicant and J.R. There continued to be concerns that the applicant would interfere with witnesses.

20. On 26 August 1996 the Regional Court rejected the applicant's complaint filed on 1 August 1996 against this decision.

21. On 30 October 1996 the District Court decided to release the applicant on a request for release lodged by him on 24 September 1996. On 26 November 1996 the Regional Court, on an appeal by the Ostrava Regional Prosecutor, (*krajský prokurátor*), quashed the District Court's decision. In the court's opinion, grounds for custody still existed under Article 67 b) of the CCP, which consisted of the possibility of his interfering with witnesses who had not yet been examined, and there was also a risk of possible interference with the co-accused.

22. On 23 October 1996 the Regional Prosecutor requested an extension of the applicant's detention due to the fact that his custody would end on 22 November 1996 and it would not be possible to conclude the case by then because of its scope.

23. On 8 November 1996 the Regional Prosecutor filed a complaint against the District Court's decision of 5 November 1996 in which the court had rejected the Regional Prosecutor's motion. On 26 November 1996 the Regional Court granted this complaint, quashed the District Court's

decision and extended the applicant's custody to 26 January 1997 pursuant to Article 71 § 2 of the CCP.

24. On 16 January 1997 the District Court extended the applicant's detention until 27 March 1997, on a request by the Regional Prosecutor of 7 January 1996, concluding that a risk still persisted that the applicant would influence witnesses. On 17 February 1997 the Regional Court rejected a complaint filed by the applicant on 22 January 1997 against the District Court's decision, referring, *inter alia*, to the complex character of the case.

25. On 6 March 1997 the District Court granted a request made by the applicant on 24 February 1997 and decided to release him from custody. It found:

"After examining the applicant's requests, the opinions of the prosecutor and the ... investigation file, the court drew the conclusion that the reasons for [the applicant's] detention ... ceased to exist. The accused ... is prosecuted for a single [offence], ... necessary investigative acts were carried out and, on 24 February 1997, the investigation was closed ... In the course of the investigation, nothing was found which would prove or indicate that the accused ... attempted to influence the witnesses or his co-accused or that he tried to jeopardise the discovery of facts, which were essential for the criminal investigation. Thus, there are no longer the original grounds for concern, within the meaning of section 67 b) of the [CCP], and taking into account that there are no other reasons for the detention, [the court] decided to release the accused from custody ..."

26. On 24 March 1997 the Regional Court, upon the Regional Prosecutor's appeal of 12 March 1997, quashed the District Court's decision and ordered the applicant's continued remand in custody, stating:

"The Ostrava Regional Prosecutor filed a complaint against the decision of the District Court ... maintaining that the reasons for the accused's detention under section 67 b) of the [CCP] continue to exist, having regard to the fact that there is still a risk that, if released, the accused would influence witnesses and/or the co-accused who have not yet been interviewed by the court, and, in addition, the residence of one witness has not yet been established."

27. On 7 May 1997 the Regional Court dismissed a further request by the applicant for release from custody, filed on 5 May 1997. On 29 May 1997 the High Court rejected a complaint by the applicant of 13 May 1997 against the Regional Court's decision.

28. On 18 September 1997 the Regional Court rejected a request by the applicant for release from custody of 28 August 1997. On 22 October 1997 the High Court rejected a subsequent complaint by the applicant of 23 September 1997 against the Regional Court's decision.

29. While transferring the case to the District Court (see paragraph 11 above), the Regional Court dealt of its own motion under Article 72 § 1 of the CCP with the question whether grounds for remaining the applicant in custody continued to apply, and decided to keep him in detention. On

5 January 1998 the applicant filed a complaint against this decision, which was rejected by the High Court on 22 January 1998.

30. On 20 February 1998 the applicant requested release, which the District Court rejected on 19 March 1998. The Regional Court dismissed a complaint by the applicant against this decision on 25 March 1997.

31. On 27 April 1998 the High Court rejected a request by the District Court of 9 April 1998 for an extension of the applicant's detention under Article 71 § 3 of the CCP by four months over two years, that is to 22 September 1998.

32. On 18 May 1998 the applicant was released from custody at his request, made on 15 April 1998.

C. Proceedings on the applicant's constitutional appeal

33. On 14 April 1997 the applicant lodged a constitutional appeal (*ústavní stížnost*) with the Constitutional Court (*Ústavní soud*) against the Regional Court's decision of 24 March 1997 claiming, *inter alia*, that there had been no reason for keeping him in custody.

34. On 9 May 1997 the Regional Court and the Regional Prosecutor were invited to submit their observations on the constitutional appeal. The Regional Court's observations were submitted on 28 May 1997 and the Regional Prosecutor's observations on 13 June 1997.

35. In subsequent period, the Constitutional Court regularly requested the ordinary courts to lend it file materials. From the Constitutional Court's file it can be seen that requests to lend the file materials or furnish information as to the location of the file materials were made on 5 August, 2 September and 10 December 1997, 25 March, 9 April, 7 and 21 May, 18 June, 2 July, 2 and 26 October 1998, 19 January, 9 June and 4 November 1999, and 21 June, 7 July and 24 August 2000.

36. On 30 January 2001 the Constitutional Court found that the reasons for the applicant's continued detention, as provided for in section 67 b) of the CCP, were well-founded. It stated, however, that the Regional Court had failed to reason its decision of 24 March 1997 sufficiently and that the applicant's rights to a fair trial, guaranteed by Article 36 § 1 of the Charter of Fundamental Rights and Freedoms (*Listina základních práv a svobod*), and to liberty, under Article 5 § 1 of the Convention, had been violated. It therefore quashed the Regional Court's decision.

II. RELEVANT DOMESTIC LAW

Code of Criminal Procedure (as in force at the material time)

37. Under Article 67 b) an accused person may be remanded in custody only if there exist specific grounds to believe that he or she will try to influence witnesses or co-accused who have not yet been heard by the court or otherwise frustrate the investigation into the facts which are of importance for the criminal proceedings, or will commit an offence which he or she was preparing or threatened to commit.

38. Pursuant to Article 71 § 2, a person's detention may last as long as is necessary. If the detention lasted more than six months at the pre-trial stage and the release of the accused person would have jeopardised or substantially complicated the achievement of the aim of the proceedings, a judge can extend the detention for one year, or a chamber for two years.

39. Under Article 71 § 3 a person's detention at the pre-trial stage and at trial should not exceed two years. If, because of the complexity of the matter or for other serious reasons, it has not been possible to complete the criminal proceedings within this period, and if the release of the accused person would jeopardise or substantially complicate the achievement of the aim of the proceedings, the High Court can extend the detention for the necessary period.

THE LAW

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

40. The applicant complained that the duration of his pre-trial detention had been in breach of the reasonable-time requirement. He relied on Article 5 § 3 of the Convention which provides 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.”

A. Admissibility

41. The Government maintained that the applicant had failed to submit his application to the Court within six months as provided for in Article 35 § 1 of the Convention. They submitted that the applicant had been

released from custody on 18 May 1998 while his application was lodged on 20 July 2001 and again on 27 September 2002.

42. The applicant disagreed with the Government's contention.

43. The Court considers that while the applicant was in remanded custody until 18 May 1998 (see paragraph 32 above), the final decision for the purposes of Article 35 § 1 of the Convention in respect of the length of his continued detention under Article 5 § 3 of the Convention was that of 30 January 2001 by which the Constitutional Court, upon the applicant's constitutional appeal against the Regional Court's order of 24 March 1997 remanding him in custody for the last time, quashed this order and found a violation of the applicant's rights under Article 5 § 1 of the Convention (see paragraphs 26, 33 and 36 above). The Court finds therefore that the Constitutional Court's decision was directly relevant for the applicant's claim concerning the protracted length of his detention. Accordingly, the Government's objection must be dismissed. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Moreover, it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Period to be taken into consideration

44. The applicant's detention started on 22 May 1996, when he was arrested on suspicion of attempted tax evasion (see paragraph 17 above). That period came to an end on 18 May 1998 when he was released (see paragraph 32 above). Accordingly, the period to be taken into consideration amounts to almost two years.

2. The reasonableness of the length of detention

(a) The parties' arguments

45. The Government maintained that the course of action followed in the extending of the applicant's detention and also as regards his requests for release from detention had been lawful. The courts had mostly been of the opinion that there was a real danger that if released, the applicant would have interfered with the witnesses who had not yet been heard by the court, or also co-defendant J.P., whereby he would have obstructed the explanation of the facts which had had a material bearing on the criminal prosecution.

46. While the criminal proceedings had not been particularly complex, the case had been complicated by the fact that, together with the applicant, eight other persons had been prosecuted. Moreover, the applicant had made

many requests for release from custody and had consistently taken the opportunity to make representations. According to the Government, the applicant's counsel was invited twice to remedy the defects in the power of attorney. After the counsel had been struck off the rolls, it was necessary to give the applicant reasonable time to select another counsel. These facts caused a delay of around four months in the proceedings. The Government also noted that the trial had been prolonged due to the health of the applicant, who had been in the prison hospital until 4 September 1997, and his criminal case had had to be severed for separate consideration.

47. According to the Government, the national authorities had proceeded, at all stages of the proceedings, with "particular diligence". The Regional Court had transferred the case to the District Court only on 19 December 1997, not having had the criminal file between 20 August and 28 November 1997 (see paragraphs 12 and 13 above).

48. The applicant argued that the length of his detention during judicial proceedings had been contrary to the requirements of Article 5 § 3 of the Convention, that the national authorities had not displayed "special diligence" in the conduct of the proceedings, and that he should have been released pending trial. The Government added that in the subsequent period the Constitutional Court regularly requested the ordinary courts to lend it the file materials. A part of the file materials was lent to it as late as 31 August 2000, and the complete file materials were lent only on 29 September 2000. This was caused by the fact that the criminal case concerned nine defendants, who were making representations against the courts' decisions, and therefore the file was constantly travelling between courts of various instances. There also had to be regular decisions on the custody of the defendants. For some time, the file was annexed to the criminal files concerning the applicant's prosecution in other criminal cases.

3. The Court's assessment

(a) General principles

49. 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 judgments (see, among 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-X, with further references).

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

50. The Court observes that the authorities relied on the reasonable suspicion that the applicant had committed the offence with which he had

been charged, and a risk that he might influence witnesses and his co-accused and, therefore, interfere with the conduct of the proceedings. They repeated those grounds in all their decisions. The Regional Court further referred to the complexity of the criminal proceedings (see paragraph 24 above), this was however put in doubt by the Government (see paragraph 46 above).

51. The Court accepts that the suspicion against the applicant of having committed the offence and the need to secure the proper conduct of the proceedings might initially justify his detention. However, with the passage of time, these grounds became less relevant and cannot justify the entire period of nearly two years during which the applicant remained in detention (see, *mutatis mutandis*, *Malik v. Poland*, no. 57477/00, § 45, 4 April 2006). Moreover, the Constitutional Court found that the Regional Court's decision of 24 March 1997 ordering the applicant's continued remand (see paragraph 36 above) lacked sufficient reasoning.

52. The Court further observes that the applicant was detained on charges of tax evasion and was finally sentenced to eighteen months' imprisonment. Moreover, even though the applicant had committed the offences with the help of other eight persons, there is no indication that he was a member of an organised crime group. It does not appear therefore that his case presented particular difficulties for the investigation authorities and for the courts to determine the facts and the degree of responsibility of the perpetrators, as would undoubtedly have been the case had the proceedings concerned organised crime (see *Malik*, cited above, § 49).

53. Finally, the Court would emphasise that under Article 5 § 3 of the Convention the authorities, when deciding whether a person is to be released or detained, are obliged to consider alternative means of guaranteeing his appearance at the trial. Indeed, that Article lays down not only the right to "trial within a reasonable time or release pending trial" but also provides that "release may be conditioned by guarantees to appear for trial" (see *Jarzynski v. Poland*, no. 15479/02, 4 October 2005, § 44, and *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000).

54. In the present case the Court notes that there is no express indication that during the entire period of the applicant's pre-trial detention the authorities envisaged any other guarantees of his appearance at trial. Nor did they give any consideration to the possibility of ensuring his presence at trial by imposing on him other "preventive measures" expressly foreseen by Czech law to secure the proper conduct of criminal proceedings.

55. The Court is therefore not satisfied that the reasons given to justify the applicant's detention for nearly two years were "relevant" and "sufficient", as required under Article 5 § 3 of the Convention.

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

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

56. The applicant further complained about the length of the proceedings held before the Constitutional Court which was required to determine the lawfulness of the applicant's continued detention. In its decision on admissibility, the Court found that his complaint fell in substance under Article 5 § 4 of the Convention which provides:

“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. Admissibility

57. The Government argued that during the proceedings before the Constitutional Court the applicant had been released from custody. With regard to the fact that Article 5 § 4 of the Convention only concerns persons deprived of liberty and its main aim is to achieve the release of a person deprived of liberty if the deprivation was unlawful, the Government considered that the period when the Constitutional Court had been deciding on the applicant's constitutional appeal from his release, namely from 18 May 1998, was incompatible *ratione materiae* or *ratione temporis*. Moreover, the Government considered, referring to their precedent argument in respect of the applicant's complaint under Article 5 § 3 of the Convention, that this complaint was inadmissible for non-respect of the six-month time-limit within the meaning of Article 35 § 1 of the Convention.

58. The Government further noted that it was not necessary for the Court to assess in the abstract whether the proceedings on the constitutional appeal regarding the applicant's request for release from custody had complied with the requirement of a speedy delivery of a decision within the meaning of Article 5 § 4 of the Convention in a situation when the applicant had been released from custody before the delivery of the Constitutional Court's decision, once there were no longer grounds for keeping him in custody. Moreover, although the Constitutional had quashed the Regional Court's criticised decision, the reasons for having done so had not been any doubts about the grounds for the custody but formal errors made by the Regional Court, which had not sufficiently substantiated its decision, thereby causing it not to be reviewable. However, the Constitutional Court had agreed with the existence of the grounds for keeping the applicant in custody.

59. The Court reiterates that in the judgment delivered in the case of *Smatana v. the Czech Republic* (no. 18642/04, 27 September 2007), when examining whether the requirement of a “speedy” decision contained in Article 5 § 4 of the Convention was met, it held that the relevant period should also include the length of the period for which the Constitutional Court had considered the constitutional appeal (§§ 123 and 125).

60. In these circumstances, the Government's objections must be dismissed.

61. The Government also noted that the Constitutional Court had concluded that the Convention had been violated, although in respect of a different provision of the Convention from Article 5 § 4 of the Convention. The applicant had received certain satisfaction and therefore was not a victim of a violation of the Convention within the meaning of Article 34 of the Convention. The Government added that more than seven and a half years had passed since the applicant's release from custody.

62. The Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Amuur v. France*, judgment of 25 June 1996, *Reports* 1996-III, § 36, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

63. In the present case the Court observes that the Constitutional Court, in its decision of 30 January 2001, by which it quashed the Regional Court's decision of 24 March 1997, found that the reasons for the applicant's continued detention were well-founded. It stated, however, that the court had failed to reason its decision sufficiently and that the applicant's rights to a fair trial and to liberty had been violated. The constitutional jurisdiction remained silent on the question of redress to be afforded to the applicant.

64. Having regard to the foregoing, the Court finds that the applicant can still claim to be a "victim" of a breach of Article 5 § 4 of the Convention. Accordingly, the Government's objection concerning the lack of "victim status" should be dismissed.

65. In their complementary observations, the Government raised a plea of non-exhaustion of domestic remedies in so far as this complaint is concerned. They maintained that the applicant could have sought compensation pursuant to Act no. 82/1998 as amended.

66. The Court reiterates that, under the Convention organs' case-law, where lawfulness of detention is concerned, an action for damages filed *a posteriori* against the State is not a remedy which has to be utilised, because the right to have the lawfulness of detention examined by a court and the right to obtain compensation for any deprivation of liberty incompatible with Article 5 are two separate rights. The only remedy which the Government may refer to in respect of their non-exhaustion of domestic remedies plea is therefore a remedy accessible to the applicant which could lead to his release pending the period concerned (see *Jurjevs v. Latvia*, no. 70923/01, 15 June 2006, § 34, with further references to *Włoch v. Poland*, no. 27785/95, §§ 89-93, ECHR 2000-XI). However, the claim for compensation under Act no. 82/1998 as amended does not constitute such

a remedy (see, *mutatis mutandis*, *Vokurka v. the Czech Republic* (dec.), no. 40552/02, 16 October 2007, unreported).

67. In the light of the foregoing, the Court concludes that the Government's preliminary objection of non-exhaustion must be dismissed.

B. Merits

68. In accordance with the Court's case-law, Article 5 § 4 of the Convention, in guaranteeing to persons arrested or detained a right to institute proceedings to challenge the lawfulness of their deprivation of liberty, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful (see *Baranowski v. Poland* [GC], no. 28358/95, ECHR 2000-III). The requirement of Article 5 § 4 of the Convention that decisions be taken "speedily" must - as is the case for the "reasonable time" stipulation in Articles 5 § 3 and 6 § 1 of the Convention - be determined in the light of the circumstances of each case (see *G.B. v. Switzerland*, no. 27426/95, § 33, 30 November 2000).

69. In the present case it is undisputed that the applicant's constitutional appeal against the Regional Court's decision of 24 March 1997, submitted on 14 April 1997, was only examined on 30 January 2001, three years, nine months and eighteen days later (see paragraphs 33 and 38 above). The Court does not find the arguments submitted by the Government sufficiently convincing to justify that inordinate delay.

70. In these circumstances the Court considers that the constitutional appeal was not examined speedily, as required by Article 5 § 4 of the Convention.

71. There has been, therefore, a violation of that provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

73. The applicant did not specify any claims for just satisfaction. The Court therefore makes no award in this respect.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the remainder of the application admissible;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention.

Done in English, and notified in writing on 13 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Rait Maruste
President