



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

FOURTH SECTION

CASE OF NĂVOLOACĂ v. MOLDOVA

(Application no. 25236/02)

JUDGMENT

STRASBOURG

16 December 2008

FINAL

16/03/2009

This judgment may be subject to editorial revision.

In the case of Navoloaca v. Moldova,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 25 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 25236/02) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Moldovan national, Mr Ștefan Năvoloacă (“the applicant”), on 13 June 2002.

2. The applicant was represented by Mr B. Druță, a lawyer practising in Chișinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicant alleged, in particular, that he had been detained unlawfully and that he had been convicted arbitrarily of a criminal offence in the absence of any evidence of his guilt.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). On 28 November 2006 a Chamber of that Section decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1968 and lives in Sîngerei.

6. The facts of the case, as submitted by the parties, may be summarised as follows.

7. The applicant was convicted of theft and robbery and served his sentence, having been conditionally released on 7 April 1999. On 20 April 2000 he was arrested by the police for resisting them and taken to the police station in Ialoveni. A court found that the applicant had not committed any offence and ordered his release.

8. After releasing him, the police immediately re-arrested him and filmed him. Thereafter he was accused of having murdered P., the director of a private company.

9. According to the prosecution, the applicant had good relations and was in frequent contact with his former colleague S., who in turn maintained close relations with a company directly competing with that of P. for rice imports from Romania. P. had received a number of threats to make him stop his activity, the latest of which had been on 8 September 1999.

10. The prosecution submitted that on 12 September 1999 the applicant and another suspect, who remained unidentified, had waited near P.'s house until he came out with a sports bag in his hand and climbed into a truck that was waiting for him. At that moment (approximately 7 p.m.) the two suspects had opened the passenger door and one had ordered P. at gunpoint to hand over the bag containing 8,700 United States dollars and 12,000 Moldovan lei. P. had kicked the attacker and had been shot three times. He died shortly afterwards. The other suspect had threatened Z., the truck driver, with a knife and ordered him to stay put, and had then taken the bag. He and the applicant then fled into a nearby park.

1. Judgment of the Chişinău Regional Court of 30 May 2001

11. The court found that the applicant had never admitted his guilt and that on 20 April 2000 a charge of resisting the police had been fabricated by officers Dodu and Gulea from the Ialoveni police station. After being acquitted of the offence by a court, he had been arrested again by the same police officers.

a. Statements by the witnesses

12. The court examined the statements made by various witnesses in the case. P.'s wife stated that the decision to travel to Romania on business had been taken in the afternoon of 12 September 1999 and that only she, P.'s cousin M.P., a business partner V. and the truck driver Z. had known about

this. She confirmed that threats had been made against her husband by agents of the competing company.

13. M.P. and V.P., P.'s cousin and brother, were not present at the crime scene but confirmed that threats had been made against P. by agents of the competing company.

14. Z., the truck driver, confirmed the attack by two unknown persons. During the investigation he listened to three male voices, including that of the applicant refusing to repeat a standard text, but did not identify either attacker's voice. He did not recognise the applicant's voice during the court hearings either. The court concluded that nothing in Z.'s testimony pointed to the applicant's involvement in the crime.

15. C.I., a witness, testified in court that he did not remember the date or month of the event. He had seen two men attack the passenger in the truck and flee past him. He later recognised one of them during the identity parade as being the applicant, who was the shorter of the two attackers; the other had had a black object in his hand. He also recognised the shirt taken from the applicant's house as having been worn by one of the attackers. It was the taller person and not the applicant who had shot P.

16. C.D., another witness, did not remember the date, month or year of the event. She had seen two men attack the truck's passenger. The taller one, dressed in light coloured clothes, had pulled the victim from the truck and taken the bag, after which both attackers, who were armed, had fled. She had not seen anyone come out of the car parked behind the truck.

17. The court found that the statements of C.I. and C.D. were inconsistent with their earlier statements. During the initial investigation each had said that the person wearing a dark denim shirt was the taller one and had the bag in his hand; they had recognised him as the applicant. However, during the court hearing they stated that the applicant was the shorter one and had been wearing a velvet shirt. The court also doubted that either of them could have seen P. kicking one of the attackers: according to both witnesses, the two attackers had mounted the truck's ladder, but in that case the witnesses could not have seen anything in the cabin. C.I.'s and C.D.'s statements also contradicted Z.'s statement, according to which one attacker had climbed into the truck from the passenger side, while the other threatened him with a knife. The person wearing dark clothes had shot P., but Z. did not recognise the applicant as being that person, nor as being the other attacker. Besides, both C.I. and C.D. stated that the shots had been fired from a short distance, when both attackers were on the truck's ladder. However, the expert report could not prove the distance from which the shots had been fired, except to find that they had not been made from a short distance (of under one metre). Another report showed that the shots had been fired upwards at a 45° angle. Hence, the shot could not have been fired from the truck's ladder, contrary to the testimony of these two witnesses.

18. C.C., another witness, generally confirmed the events witnessed by C.I. and C.D. but could not recognise any of the attackers.

19. U.E. was an off-duty police officer who had been waiting for his friend in a car parked some distance behind the truck at the time of the attack. At the beginning of the investigation he stated that he had not realised that a crime was being committed and did not think he could identify any of the attackers. He had seen one attacker from the side and the other from the back. Both had been wearing dark clothes; one had medium-length dark hair and was aged around 30. He gave similar statements on 4 January and 19 April 2000. On 7 May 2000 he was able to remember details such as the colour and material of the attackers' shirts; the colour of their hair and hairstyles; their approximate height; and that the shorter attacker wore a light coloured shirt (as opposed to his earlier statement that both had worn dark clothes). The court considered that his statements were not reliable since they contradicted his own earlier statements and those made by witnesses C.I. and C.D. U.E.'s statement was videotaped but was not shown to him after the event as required by Article 115 of the Code of Criminal Procedure ("the CCP", see below). Moreover, the court questioned U.E.'s actions since he, as a police officer, had not reacted to a number of signs that a crime was being committed, such as the sound of shots, the fact that the truck's driver had fled in one direction while two other persons ran in another, and that someone had fallen to the ground from the truck.

20. Other witnesses confirmed the nature of the relations between P. and the competing company but did not, in the court's opinion, confirm in any way the applicant's involvement.

21. N.E., another witness, stated that the applicant and his girlfriend E.L. had been renting her apartment since early 2000. They did not have much money, and brought food from E.L.'s parents. The applicant was arrested by two police officers at her apartment; she was told he was suspected of murder.

22. Several witnesses (E.L., T.I., G.N.) testified that on the day of the crime they had seen the applicant with his girlfriend E.L. in her room in a dormitory. G.N., a nurse, had given E.L. medication because she felt ill, at approximately 4 p.m. and 8 p.m. on that day. She was not sure whether it had been 11 or 12 September, but she remembered distinctly that it had been a Sunday (12 September 1999 was a Sunday). She had seen the applicant with E.L. at 8 p.m.

23. E.L. confirmed that the applicant had been with her all that time. He had not had any dark trousers before November 1999, as confirmed also by I.T. and G.N.

24. None of the witnesses who lived in the same dormitory as E.L. had noticed any improvement in her financial state or that of the applicant after September 1999.

25. S. and C.A. denied having informed E.L. about the course of the investigation. C.A. confirmed that he had handed E.L. a note from the applicant, in which the latter claimed to have requested various personal items and that food be brought to him. The applicant had sent a similar letter to S.

b. Reports on evidence gathering procedures

26. On 21 April 2000 the applicant was presented to witnesses in an identity parade. The court noted that witness C.I. confirmed that he had been shown a sketch of the applicant before the identity parade, and that no record of that procedural act had been made, contrary to Article 115 of the Code of Criminal Procedure (see below). He then recognised the applicant in the identity parade.

27. During the identity parade and in court witness C.D. was not completely sure that she had seen the applicant at the crime scene. She told the court that she had been shown a short video recording of the applicant just before the identity parade. One of the other persons in the identity parade (S.S.) stated that C.D. had not been sure of herself when she identified the applicant; she had stated that the attacker had worn a blue denim shirt. In addition, the video recording of her recognising the applicant in the identity parade was very poor and it was impossible to determine what she had said or at whom she had pointed.

28. Neither C.I. nor C.D. was shown the recording of the identity parades with their participation, again contrary to Article 115 CCP (see below).

29. The court found that the prosecution did not deny having videotaped the applicant on his arrest without registering that act. The prosecution merely argued that the applicant and his lawyers had not complained about the videotaping until the trial.

30. During the identity parade the applicant was dressed in a grey velvet shirt, which later (on 20 August 2000) was taken as incriminating evidence by the prosecution and identified by some witnesses as having been worn by one of the attackers. None of the witnesses recognised the shirt on the day of the identity parade. The court found that all the witnesses who recognised the shirt had previously stated that it was a denim shirt, whereas the one found in the applicant's house was velvet. Moreover, C.I. was shown another shirt for recognition, the recorded size of which was much bigger than the one found at the applicant's house.

31. Mr Andrei Dodu, the officer who arrested the applicant on 20 April 2000, also reported on a search of the applicant's mother's house on 30 April 2000. At the court hearing witnesses present during the search, as well as the applicant's mother, confirmed that no bag handle had been found in the house and taken as incriminating evidence during the search and that they had signed the report without any mention of any specific finding. The

court also found that the text of the report had been altered, additional information about finding a bag handle having been added to the report and written over the lines crossed through the empty space at the bottom of the document. Contrary to the legal requirements, the report did not state precisely where the handle had been found or its characteristics, and the object was not kept in a sealed bag.

32. The court concluded that the report had been fabricated by its author, officer Dodu, who could not provide in court any details about the circumstances of finding the bag handle. In addition, the handle was absolutely new and could have come from any similar bag sold in the shops.

33. A number of expert reports were made, establishing that three shots had been fired from an unknown distance (but not from close range) from an unknown type of revolver with a 37.5 mm calibre. The weapon was not found. No report appears to have been made on the presence or absence of traces of gunpowder on the applicant's clothes.

c. The court's conclusions

34. The court concluded that none of the witnesses had stated that any of the persons at the competing company, the applicant or his acquaintances had been aware of P.'s unplanned business trip. Only four persons close to P. had known about the trip on 12 September 1999. The prosecution had not investigated whether any of the drivers whom Z. had informed about the trip during the period between 1 and 5 p.m. on the date of the crime could have been involved in the crime.

35. The expert reports proved only the manner in which the crime had been committed and not the applicant's involvement in it. The witnesses who claimed to have recognised the applicant had contradicted their own statements made before the applicant's arrest and statements of other prosecution witnesses, contradictions which could not be reasonably explained. Moreover, evidence had been obtained with serious violations of criminal procedure, which meant, under Article 55 of the CCP, that it could not be relied on.

36. No one in P.'s competing company had been charged with ordering the killing of P., even though this was the version relied on by the prosecution. Moreover, it was clear from the attackers' actions that they initially wanted just the money and not to kill P. Only after the latter resisted was he shot. The court was convinced that the attackers had planned a robbery and that one attacker had exceeded the initial common intention and was alone responsible for P.'s murder. Even if the statements of C.I. and C.D. were to be accepted in evidence, according to them it was not the applicant but the other attacker who had shot P. In that case, the applicant could not be held responsible for the excessive action of the other attacker.

37. The evidence relating to the relations between the applicant, S. and P.'s competing firm did not in any way prove the applicant's guilt.

38. The court acquitted the applicant, finding that there was no evidence that he had committed the crime.

2. Judgment of the Court of Appeal of 22 October 2001

39. On 22 October 2001 the Court of Appeal upheld the lower court's judgment. It found that the prosecution's case was based on assumptions and evidence obtained in serious breach of the Code of Criminal Procedure. The court emphasised that the applicant had been filmed and the videotape shown to witnesses before the identity parade and that there was no direct evidence proving his guilt.

40. The court rejected the prosecution's submission that P. had been killed by the applicant on the orders of the competing company, since those responsible should also have been accused of the crime.

3. Judgment of the Supreme Court of Justice of 15 January 2002

41. On 15 January 2002 the Supreme Court of Justice held a hearing from which the applicant was absent, being represented by his lawyer, and at which no witnesses were heard. The court quashed the lower courts' judgments and delivered a new one, convicting the applicant. It did not examine any evidence directly and based its findings on the case file as established by the lower courts. It found the evidence to be sufficient to prove the applicant's guilt and that the lower courts had reached incorrect conclusions on the basis of the file.

42. The court found that the applicant's guilt was proved by the following evidence: P.'s wife stated that unknown persons had killed her husband and taken money from him; he had earlier been threatened by agents of the competing company; similar statements regarding threats from the competing company were made by M.P. and V.P; and they had also recognised the bag handle found in the applicant's mother's house as coming from the bag taken from P. on the day of the attack.

43. Z., the truck driver, confirmed that P. had been threatened by agents of the competing company. On 12 September 1999 at around 7 p.m. he had arrived with his truck and P. had come out and climbed in. Then a person had opened the passenger door and threatened P. with a gun, asking for the bag containing the money. P. had offered resistance and two shots were then fired. Another man had climbed into the truck and threatened him with a knife, taking the bag. Both attackers had fled into the woods.

Two expert reports confirmed P.'s death from three gunshots.

44. C.I. declared that he had seen the applicant attack P. and flee with the bag. He had recognised the applicant in the identity parade. These statements were confirmed by C.D. and C.C., who were with him.

45. U.E. also confirmed that he had seen the applicant on 12 September 1999 during the attack. After hearing gun shots, he had seen two men

running from the truck, one of whom he had identified as “a person with sunglasses and a sports bag in his hand”.

46. C.I., C.D., C.C. had been some fifteen metres from the applicant and U.E. had been even closer, remembering the shape of the applicant’s lips, and his height, hairstyle and clothes. All witnesses declared that there could be no case of mistaken identity as they had seen the applicant clearly.

All this evidence excluded any doubt about the applicant’s guilt.

47. The court dismissed the statements of witnesses providing an alibi for the applicant because they were inconsistent. There was no evidence that E.L., the applicant’s girlfriend, had been ill on 12 September 1999 precisely and that the applicant had been with her throughout the day. Moreover, none of the witnesses had indicated 7 p.m. precisely as the time when the applicant had been with E.L. One witness (N.E.) had not even been sure of the date, remembering only “one day in September” as the day which E.L. had spent ill in bed and not remembering whether the applicant had been with her.

48. Moreover, E.L. had been coached about what to say during the investigation, as confirmed by S. and C.A., who had organised meetings and transmitted information to her. Even though E.L. claimed to have felt very ill on the day of the crime, she and the applicant had not called an ambulance, which could have proved her state of health. In addition, the distance between E.L.’s dormitory and the crime scene was not substantial and could be covered quickly by car.

49. The court also noted that the applicant was an old colleague of S., with whom he had maintained contact. S. in turn had been in frequent contact with P.’s competing company and the applicant had also become close to that company’s owners as an acquaintance of S. Thus the applicant had been aware of P.’s activity and that he carried a lot of money, which had prompted him to commit the crime.

50. Basing its decision on the above evidence, which it found to be coherent and logically consistent, the Supreme Court of Justice convicted the applicant and sentenced him to twenty years’ imprisonment.

II. RELEVANT DOMESTIC LAW

51. Article 335 of the Code of Criminal Procedure (in force before 12 June 2003) read as follows:

“Article 335/4

In examining an appeal on points of law (*recurs*), the court shall verify the appealed judgment based on the materials in the case file and of any new documents submitted to the court of *recurs*.

Article 335/5.

After examining an appeal on points of law, the court shall adopt one of the following decisions:

...

(2) allow the *recurs*, set aside the judgment and:

(a) uphold the judgment of the first-instance court, where the appeal was accepted incorrectly;

(b) order the acquittal of the accused person and the termination of the criminal proceedings in the cases provided for in article 5 of the Present Code;

(c) order a re-examination of the case by the court which adopted the quashed judgment [in cases where that court allowed procedural violations];

(d) order a re examination of the case by the court of *recurs* in all other cases not covered by paragraph (2)(c) of the present Article.”

THE LAW

52. The applicant complained under Article 5 of the Convention that his detention had been unlawful. The relevant part of Article 5 reads as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

... (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ...”

53. He also complained under Article 6 of the Convention that the criminal proceedings against him had not been fair. The relevant part of Article 6 § 1 of the Convention, reads:

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

54. He finally complained under Article 7 of the Convention, the relevant part of which reads:

“1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. ...”

I. ADMISSIBILITY

55. The Government argued that the applicant had missed the six-month period for lodging his complaint concerning his unlawful detention. Moreover, he had failed to exhaust available domestic remedies in respect of that complaint.

56. The Court notes that on 30 May 2001 the first-instance court acquitted the applicant, following which he was released from detention. However, he lodged his application only on 13 June 2002, more than six months after his detention had ended. Accordingly, this complaint was introduced outside the time-limit set by Article 35 § 1 of the Convention and must be rejected as inadmissible pursuant to Article 35 § 4 of the Convention.

57. The Court also notes that in his initial application the applicant complained of a violation of Article 7 of the Convention. However, he gave no detail and did not submit any arguments in his observations in this respect. The Court considers that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

58. The Court considers that the applicant's complaint under Article 6 of the Convention raises questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits, and no other grounds for declaring them inadmissible have been established. The Court therefore declares this complaint admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider the merits of the complaint.

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

59. The applicant argued that the proceedings leading to his conviction and sentencing had been unfair and arbitrary. He submitted, in particular, that the Supreme Court of Justice had convicted him without directly examining any evidence and based only on the materials of the case file as constituted by the lower courts. He also argued that the Supreme Court of Justice accepted evidence obtained in clear violation of domestic procedure, such as fabricating evidence by showing witnesses the applicant's video before the identity parade or adding text to the minutes of a search at the applicant's parents' house.

60. The Government submitted that it was primarily for the domestic courts to determine the relevance of evidence and that the Court should not re-examine the case as a "fourth instance court". The Supreme Court of Justice had the power to reverse the lower courts' judgments (see paragraph 51 above), and this was not, in itself, contrary to Article 6. In reversing the

lower courts' judgments, the Supreme Court of Justice gave ample reasons which cannot be regarded as arbitrary or unsupported by evidence in the case. The applicant fully enjoyed the various aspects of the rights to a fair trial and had the opportunity to challenge, before the domestic courts, the manner of obtaining and using evidence.

61. The Court refers to the general principles concerning the manner of application of Article 6 to proceedings before courts of appeal, as summarised in *Popovici v. Moldova* (nos. 289/04 and 41194/04, §§ 66-69, 27 November 2007). In particular, in *Sigurþór Arnarsson v. Iceland* (no. 44671/98, § 32, 15 July 2003) it was observed that the fact that the highest court in a Contracting State, such as the Supreme Court in the instant case, was empowered to overturn an acquittal by the lower court(s) without the defendant and witnesses being present and without hearing them did not of itself infringe the fair hearing guarantees in Article 6 § 1 of the Convention.

That being said, in determining whether the rights of the defence have been respected it is essential to have regard to the nature of the issues which are being examined by the highest court in question and the role assigned to it (see *Popovici*, cited above, § 69).

62. In this connection, and from the angle of compliance with Article 6 guarantees, the Court observes that there are certain similarities between the circumstances of the instant case and those of *Popovici*, cited above. In *Popovici*, the Supreme Court of Justice acted as a second-instance court empowered to hear the entire case and to examine any evidence submitted by the parties. The Court found that there had been a breach of Article 6 because the Supreme Court of Justice, in the event, reversed Mr Popovici's acquittal without rehearing the case. In the present case the Supreme Court of Justice acted as a third-instance court under the provisions of the old Code of Criminal Procedure and was prevented by law from directly examining witnesses (see paragraph 51 above), although it could have heard the applicant in person. The Court notes in this latter connection that the Government have not argued that the applicant had waived his right to appear before the Supreme Court of Justice and there is nothing in the file which would support that the applicant had unequivocally waived his right.

63. The Court notes that the case against the applicant was virtually entirely based on witness statements. All other evidence, such as various technical reports, only showed the manner in which the crime had been committed, but did not prove the applicant's involvement in it. In overturning the lower courts' judgment, the Supreme Court of Justice dealt extensively with the witness statements. It found, for instance, that several witnesses whose statements provided the applicant with an alibi were not coherent or credible enough to constitute an acceptable defence. It did not deal with the lower courts' findings that the witnesses for the prosecution had made inconsistent statements which were partly contradicted by

objective evidence and that those statements were unreliable since the witnesses had been influenced by seeing a video recording before the identity parade. The Supreme Court of Justice therefore disagreed with the assessment of the witnesses made by the lower courts, while it was prevented by law from directly examining those witnesses.

64. In such circumstances, and having regard to what was at stake for the applicant, the Court does not consider that the issues to be determined by the Supreme Court when convicting and sentencing the applicant – and, in doing so, overturning his acquittal by the lower courts – could, as a matter of fair trial, have been properly examined without a direct assessment of the evidence given by the applicant in person and by the witnesses (see *Botten v. Norway*, 19 February 1996, § 52 and 53, *Reports of Judgments and Decisions* 1996-I and *Popovici*, cited above, § 72). While the Supreme Court of Justice did not have the power to carry out such a direct examination of the witness testimony, it did have the power to order a rehearing of the case by the lower courts (see paragraph 51 above). Fairness required that the Supreme Court of Justice should have ordered a rehearing. However, it did not do.

65. In the light of the above the Court finds that the requirements of a fair trial have not been met in the present case. In the circumstances, it does not consider it necessary to examine additionally whether other aspects of the proceedings in the Supreme Court of Justice did or did not comply with that provision.

66. There has therefore been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. 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.”

68. The applicant claimed 150,000 euros (EUR) in compensation for non-pecuniary damage caused to him. He did not give any further details, but sought the quashing of his conviction by the Supreme Court of Justice.

69. The Government considered that this amount was exaggerated and unsubstantiated by either any detail or reference to the Court’s case-law. They argued that the Court previously awarded much smaller amounts in cases where it had found a violation of Article 6 by the Moldovan authorities.

70. Having regard to the violation found above, and to the prominent place which the right to a fair administration of justice holds in a democratic society (see *Delcourt v. Belgium*, judgment of 17 January 1970, § 25,

Series A no. 11), the Court considers that an award for non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards the applicant EUR 5,000.

71. In so far as the request for a consequential order is concerned, the Court considers that where, as in the instant case, an individual has been convicted following proceedings that have entailed breaches of the requirements of Article 6 of the Convention, a retrial or the reopening of the case, if requested, represents in principle an appropriate way of redressing the violation (see *Öcalan v. Turkey* [GC], no. 46221/99, § 210, ECHR 2005-IV and *Popovici*, cited above, § 87).

B. Costs and expenses

72. The applicant did not claim any sum in compensation for his costs and expenses.

C. Default interest

73. 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 under Article 6 § 1 of the Convention admissible, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 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 5,000 (five thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President