



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

FOURTH SECTION

CASE OF JAŁOWIECKI v. POLAND

(Application no. 34030/07)

JUDGMENT

STRASBOURG

17 February 2009

FINAL

17/05/2009

This judgment may be subject to editorial revision.

In the case of Jałowiecki v. Poland,

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 27 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 34030/07) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Mr Stanisław Jałowiecki (“the applicant”), on 3 August 2007.

2. The applicant was represented by Ms I. Kornaś-Pierzak, a lawyer practising in Cracow. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged, *inter alia*, that the lustration proceedings in his case had been unfair, in violation of Article 6 of the Convention.

4. On 25 February 2008 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1946 and lives in Stronie Śląskie.

6. On 3 August 1997 the Law of 11 April 1997 on disclosing work for or service in the State’s security services or collaboration with them between 1944 and 1990 by persons exercising public functions (*ustawa o ujawnieniu pracy lub służby w organach bezpieczeństwa państwa lub współpracy z nimi*

w latach 1944-1990 osób pełniących funkcje publiczne) (the “1997 Lustration Act”) entered into force.

7. On 14 April 2004 the applicant, a candidate for the European Parliament, declared that he had not collaborated with the communist-era secret services. He was subsequently elected as a Member of the European Parliament.

8. On 9 December 2004 the Warsaw Court of Appeal (*Sąd Apelacyjny*) decided to institute lustration proceedings against the applicant following a request made by the Commissioner of the Public Interest (*Rzecznik Interesu Publicznego*) on the grounds that the applicant had lied in his lustration declaration by denying that he had cooperated with the secret services.

9. On 17 February 2006 the Warsaw Court of Appeal, acting as the first-instance lustration court, found that the applicant had submitted an untrue lustration declaration since he had been an intentional and secret collaborator with the State’s secret services. The court established that the applicant had met on probably two occasions in 1973 with agents of the secret services and had agreed to help them as a consultant.

10. The applicant appealed against the decision. He submitted that he had never collaborated with the secret services and the meeting in question had been in connection with the preparation of an article. The applicant also referred to his subsequent activity in the “*Solidarność*” movement for which he had been persecuted and detained by the communist authorities. Subsequently, he was allowed to leave Poland and between 1985 and 1994 he was a deputy of the Polish Section of Radio Free Europe in Munich.

11. On 6 June 2006 the Warsaw Court of Appeal, acting as the second-instance lustration court, upheld the impugned judgment.

12. On 1 February 2007 the Supreme Court (*Sąd Najwyższy*) dismissed the applicant’s cassation appeal. That decision was notified to the applicant on 8 March 2007.

II. RELEVANT DOMESTIC LAW

13. A detailed rendition of the provisions of the relevant domestic law is set out in the Court’s judgment in the case of *Matyjek v. Poland*, no. 38184/03, ECHR 2007-...

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

A. The parties' submissions

14. The Government submitted that the applicant had not exhausted all relevant domestic remedies as required under Article 35 § 1 of the Convention. They argued that neither at the appellate nor at the cassation stage had the applicant alleged, even in substance, any infringement of his right to a fair hearing as presented in his subsequent complaint to the Court. In particular, the applicant had not questioned the alleged restrictions on his access to the case file and on taking notes from it. Nor had he complained that he could not present his arguments in accordance with the principles of an adversarial hearing and equality of arms.

15. The Government further argued that the applicant had failed to lodge a constitutional complaint with the Constitutional Court. Had the applicant been of the opinion that the legal provisions on which the courts had based their decisions or their interpretation – namely Article 156 § 4 of the Code of Criminal Procedure in conjunction with section 52 § 2 of the Lustration Act – had breached his rights, in particular his right to a fair hearing enshrined in Article 45 of the Constitution, he should have lodged a constitutional complaint. In particular, the applicant should have requested the Constitutional Court to examine whether the rules imposed by those provisions had violated his right to a fair trial.

16. The Government further submitted that the application had been lodged outside the time-limit of six months as the final decision in the applicant's case had been given on 1 February 2007 while he had lodged his application with the Court on 3 August 2007.

17. The applicant disagreed. He submitted that the rules governing access to the case file and the manner in which the lustration proceedings had been conducted could not have been effectively challenged in an appeal or cassation appeal as they were provided for by the domestic law. As regards the constitutional complaint, he submitted that it had been an extraordinary remedy which he had not been obliged to exhaust. Finally, he submitted that the decision of 1 February 2007 had been notified to him on 8 March 2007, and that he had lodged his application with the Court within less than six months from that date. The applicant provided a copy of an envelope from the Supreme Court, and a delivery receipt, confirming that the reasoned decision of the Supreme Court of 1 February 2007 had been notified to him on 8 March 2007.

B. The Court's assessment

18. The Court firstly observes that it has already found that Article 6 of the Convention under its criminal head applied to lustration proceedings (see, *Matyjek v. Poland* (dec.), no. 38184/03, ECHR 2006-... and *Bobek v. Poland* (dec.), no. 68761/01, 24 October 2006).

19. The Court also considers that the question of whether the applicant could effectively challenge the set of legal rules governing access to the case file and setting out the features of the lustration proceedings is linked to the Court's assessment of Poland's compliance with the requirements of a "fair trial" under Article 6 § 1 of the Convention (see *Matyjek v. Poland*, cited above, § 42, *Luboch v. Poland*, no. 37469/05, § 46, 15 January 2008).

20. The Court accordingly joins the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies to the merits of the case.

21. The Court further notes that the Government alleged that the applicant had introduced his application out of time and that it should be rejected in accordance with Article 35 §§ 1 and 4 of the Convention. However, the Court observes that it appears from the documents provided by the applicant that the Supreme Court's decision of 1 February 2007 had been notified to him on 8 March 2007. The Court reiterates that where an applicant is entitled to be served *ex officio* with a written copy of the final domestic decision, the object and purpose of Article 35 § 1 of the Convention are best served by counting the six-month period as running from the date of service of the written judgment (see *Worm v. Austria*, § 33, 29 August 1997, *Reports of Judgments and Decisions* 1997-V). The applicant lodged his application with the Court on 3 August 2007 thus within less than six months from the date of notification. It could not be therefore said that the application was introduced out of time. The Government's objection should be dismissed.

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

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

23. The applicant complained under Article 6 of the Convention that the lustration proceedings had been unfair. Article 6 of the Convention provides, in so far as relevant:

"1. In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing ...by [a] ... tribunal...

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

- (b) to have adequate time and facilities for the preparation of his defence;
- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.”

A. The applicant’s submissions

24. The applicant argued that the principle of equality of arms had not been respected in his case. He had been hindered in his access to the case file and thus could not defend himself properly against the allegations raised by the Commissioner of the Public Interest. Furthermore, he had been entirely deprived of a possibility to participate in the proceedings before the Commissioner and to access the case file prepared by him. He could not question the Commissioner’s decision to choose the documents to be considered as evidence against him. He also complained about his lustration trial, in particular, about the rules governing the consultation of the case file in the secret registry. He referred to the case of *Matyjek v. Poland* and complained that he could not freely consult confidential documents and had been prevented from removing any notes he had made in the secret registry. The applicant submitted that he had been placed at a significant disadvantage vis-à-vis the Commissioner who had had access to all documents and archives.

25. The applicant considered misleading the Government’s assessment that the evidence classified as secret had constituted only a minor part of his file. He submitted that some very important documents remained classified as secret and that he had a very limited access to them. These included the Militia’s files which had constituted the main evidence against the applicant, receipts that he had accepted the money, the documents in which he had allegedly agreed to cooperate etc. Moreover, all the documents presented to the court by the Commissioner had been photocopies made from microfilms, which raised doubts as to their quality and genuineness. The applicant maintained that the classified evidence in his case covered documents produced by the former security services a long time ago which were no longer important for protecting the State’s interest. Their confidentiality, however severely curtailed the applicant’s rights of defence in the lustration proceedings. As a result, he could not challenge the version of events put forward by the Commissioner.

B. The Government's submissions

26. The Government argued that the applicant's right to a fair trial had been respected in the instant case. They submitted that part of the evidentiary material in the applicant's case had been classified as "top secret" under the 1982 Protection of State Secrets Act. Afterwards, the State Security Bureau upheld the "secret" classification of those documents on the basis of the 1999 Protection of Classified Information Act. The classified character of those documents had influenced the course of the proceedings; however it had had no adverse effect on the fairness of the proceedings. Moreover, most of the evidence collected in the case file and the reasoning of the court judgments had not been classified.

27. The Government argued that under the 1999 Protection of Classified Information Act and Article 156 § 4 of the Code of Criminal Procedure, the evidence in the case, having been regarded as classified information, had been available to the parties only in the secret registry of the lustration court. They maintained that both parties to the proceedings, that is, the applicant and the Commissioner of the Public Interest, had been subject to the same strict rules governing access to the file deposited in the secret registry, in particular those regarding the taking of notes. The notes from the case file had to be made in a special notebook which was subsequently placed in an envelope, sealed and deposited in the secret registry.

28. Furthermore, the Government observed that the need to protect the public interest may justify withholding certain evidence from the defence in criminal proceedings (*Edwards and Lewis v. the United Kingdom*, nos. 39647/98 and 40461/98, § 53, 22 July 2003). However, they underlined that in the present case all evidence had been disclosed to the applicant. The only difficulty had been related to the classified nature of the evidence which had resulted in the application of particular arrangements as far as access to the case file had been concerned.

29. The Government concluded that there had been no violation of Article 6 § 1 in the present case.

C. The Court's assessment

30. The Court firstly reiterates that the guarantees in paragraph 3 of Article 6 are specific aspects of the right to a fair trial set forth in general in paragraph 1. For this reason it considers it appropriate to examine the applicant's complaint under the two provisions taken together (see *Edwards v. the United Kingdom*, judgment of 16 December 1992, Series A no. 247-B, p. 34, § 33).

31. According to the principle of equality of arms, as one of the features of the wider concept of a fair trial, each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent (see, for example, *Jespers v. Belgium*, no. 8403/78, Commission decision of 15 October 1980,

Decisions and Reports (DR) 27, p. 61; *Foucher v. France*, judgment of 18 March 1997, *Reports of Judgments and Decisions* 1997-II, § 34; and *Bulut v. Austria*, judgment of 22 February 1996, *Reports* 1996-II, p. 380-81, § 47). The Court further reiterates that in order to ensure that the accused receives a fair trial any difficulties caused to the defence by a limitation on its rights must be sufficiently counterbalanced by the procedures followed by the judicial authorities (see *Doorson v. the Netherlands*, judgment of 26 March 1996, *Reports* 1996-II, p. 471, § 72, and *Van Mechelen and Others v. the Netherlands*, judgment of 23 April 1997, *Reports* 1997-III, p. 712, § 54).

32. The Court had already dealt with the issue of lustration proceedings in the *Turek v. Slovakia* case (no. 57986/00, § 115, ECHR 2006-... (extracts)) and in *Adamsons v. Latvia* (no. 3669/03, 24 June 2008). In the *Turek* case the Court held in particular that, unless the contrary is shown on the facts of a specific case, it cannot be assumed that there remains a continuing and actual public interest in imposing limitations on access to materials classified as confidential under former regimes. This is because lustration proceedings are, by their very nature, oriented towards the establishment of facts dating back to the communist era and are not directly linked to the current functions and operations of the security services. Lustration proceedings inevitably depend on the examination of documents relating to the operations of the former communist security agencies. If the party to whom the classified materials relate is denied access to all or most of the materials in question, his or her possibilities of contradicting the security agency's version of the facts will be severely curtailed.

Those considerations remain relevant to the instant case despite some differences with the lustration proceedings in Poland (see *Matyjek*, cited above, § 56)

33. Turning to the instant case, the Court observes firstly that the Government have pointed to the series of successive laws on the basis of which the communist-era security services' materials continued to be regarded as a State secret. Thus, at least part of the documents relating to the applicant's lustration case had been classified as "top secret". The Court has considered the powers vested in the Head of the State Security Bureau, in particular to uphold or lift the confidentiality rating, inconsistent with the fairness of lustration proceedings, including with the principle of equality of arms (see *Matyjek*, cited above, § 57).

34. Secondly, the Court notes that, at the pre-trial stage, the Commissioner of the Public Interest had a right of access, in the secret registry of his office or of the Institute of National Remembrance, to all materials relating to the lustrated person created by the former security services. After the institution of the lustration proceeding, the applicant could also access his court file. However, pursuant to Article 156 of the Code of Criminal Procedure and section 52 (2) of the 1999 Protection of Classified Information Act, no copies could be made of materials contained

in the court file and confidential documents could be consulted only in the secret registry of the lustration court.

Furthermore, it has not been disputed by the parties that, when consulting his case file, the applicant had been authorised to make notes. However, any notes he took could be made only in special notebooks that were subsequently sealed and deposited in the secret registry. The notebooks could not be removed from this registry and could be opened only by the person who had made them (see *Matyjek*, cited above, § 58).

35. The Court reiterates that the accused's effective participation in his criminal trial must equally include the right to compile notes in order to facilitate the conduct of his defence, irrespective of whether or not he is represented by counsel (see *Pullicino v. Malta* (dec.), no 45441/99, 15 June 2000 and *Matyjek*, cited above, § 59). The fact that the applicant could not remove his own notes, taken in the secret registry, in order to show them to an expert or to use them for any other purpose, effectively prevented him from using the information contained in them as he had to rely solely on his memory.

Regard being had to what was at stake for the applicant in the lustration proceedings - not only his good name but also a ban on being a Member of Parliament or holding public office for 10 years - the Court considers that it was important for him to have unrestricted access to those files and unrestricted use of any notes he made, including, if necessary, the possibility of obtaining copies of relevant documents (see *Foucher*, cited above, § 36).

36. Thirdly, the Court is not persuaded by the Government's argument that at the trial stage the same limitations as regards access to confidential documents applied to the Commissioner of the Public Interest. Under the domestic law, the Commissioner, who was a public body, had been vested with powers identical to those of a public prosecutor. Under section 17(e) of the Lustration Act, the Commissioner of the Public Interest had a right of access to full documentation relating to the lustrated person created by, *inter alia*, the former security services. If necessary, he could hear witnesses and order expert opinions. The Commissioner also had at his disposal a secret registry with staff who obtained official clearance allowing them access to documents considered to be State secrets and were employed to analyse lustration declarations in the light of the existing documents and to prepare the case file for the lustration trial.

37. The Court has held that lustration measures are by their nature temporary and the necessity to continue such proceedings diminishes with time (see *Adamsons*, cited above, § 116). It has been recognised by the Court that at the end of the 1990s the State had an interest in carrying out lustration in respect of persons holding the most important public functions. The Court has also accepted that a similar interest was still legitimate at the beginning of the current decade, at least in respect of parliamentary elections (see *Chodyncki v. Poland* (dec.), no 17625/05, 2 September 2008). However, it reiterates that if a State adopts lustration measures, it

must ensure that the persons affected thereby enjoy all procedural guarantees under the Convention in respect of any proceedings relating to the application of such measures (see *Turek*, cited above, § 115, *Matyjek*, cited above, § 62 and *Adamsons*, cited above, § 116).

The Court accepts that there may be a situation in which there is a compelling State interest in maintaining secrecy of some documents, even those produced under the former regime. Nevertheless, such a situation will only arise exceptionally given the considerable time that has elapsed since the documents were created. It is for the Government to prove the existence of such an interest in the particular case because what is accepted as an exception must not become a norm. The Court considers that a system under which the outcome of lustration trials depends to a considerable extent on the reconstruction of the actions of the former secret services, while most of the relevant materials remains classified as secret and the decision to maintain the confidentiality is left within the powers of the current secret services, creates a situation in which the lustrated person's position is put at a clear disadvantage.

38. In the light of the above, the Court considers that due to the confidentiality of the documents and the limitations on access to the case file by the lustrated person, as well as the privileged position of the Commissioner of the Public Interest in the lustration proceedings, the applicant's ability to prove that the contacts he had had with the communist-era secret services did not amount to "intentional and secret collaboration" within the meaning of the Lustration Act were severely curtailed. Regard being had to the particular context of the lustration proceedings, and to the cumulative application of those rules, the Court considers that they placed an unrealistic burden on the applicant in practice and did not respect the principle of equality of arms.

39. It remains to be ascertained whether the applicant could have successfully challenged the features of the lustration proceedings in his appeal and cassation appeal. Given the Government's assertion that the rules on access to the materials classified as secret were regulated by the successive laws on State secrets and Article 156 of the Code of the Criminal Procedure and that those legal provisions were complied with in this case, the Court is not persuaded that the applicant, in his appeals or cassation appeals, could have successfully challenged the domestic law in force. In so far as the Government rely on the constitutional complaint, the Court points, firstly, to the fact that the Lustration Act had on several occasions been unsuccessfully challenged before the Constitutional Court (see *Matyjek v. Poland* (dec.), cited above). Moreover, the Court has held that a constitutional complaint was an effective remedy for the purposes of Article 35 § 1 of the Convention only in situations where the alleged violation of the Convention resulted from the direct application of a legal provision considered by the complainant to be unconstitutional (see, *Szott-Medyńska v. Poland* (dec.), no. 47414/99, 9 October 2003; *Pachla v. Poland* (dec.), no. 8812/02, 8 November 2005). In this connection, the Court observes that

the breach of the Convention complained of in the present case cannot be said to have originated from any single legal provision or even from a well-defined set of provisions. It rather resulted from the way in which the relevant laws were applied to the applicant's case and, in particular, Article 156 § 4 of the Code of Criminal Procedure, allowing the President of the Lustration Court to limit the applicant's access to the case file and his possibilities of taking notes and copying documents (see *Bobek*, cited above, § 73 and *Luboch*, cited above, § 71). In that connection the Court points to the established case-law of the Constitutional Court, according to which constitutional complaints based solely on the allegedly wrongful interpretation of a legal provision are excluded from its jurisdiction (see *Palusiński v. Poland* (dec.), cited above). The Government did not refer to any other domestic remedy which could have offered reasonable prospects of success in this case.

40. It follows that it has not been shown that the applicant had an effective remedy at his disposal under domestic law by which to challenge the legal framework setting out the features of lustration proceedings. Consequently, the Government's objection as to the exhaustion of domestic remedies should be rejected.

41. In these circumstances the Court concludes that the lustration proceedings against the applicant, taken as a whole, cannot be considered as fair within the meaning of Article 6 § 1 of the Convention taken together with Article 6 § 3. There has accordingly been a breach of those provisions.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

42. Lastly, the applicant alleged that the Lustration Act had violated Article 7 of the Convention in that the definitions employed by it had been ambiguous. He complained about a violation of Article 8 of the Convention in that the Lustration Act had required him to self-assess his moral and ethical conduct from a few decades ago. The applicant also submitted that the fact that decision-making in the lustration proceedings had been vested in specially established courts had given rise to a breach of Article 2 of Protocol No. 7 to the Convention.

43. The Court has examined the remainder of the complaints as submitted by the applicant. However, having regard to all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that the applicant has failed to substantiate his complaints (see *Chodyncki v. Poland* (dec), no. 17625/05, 2 September 2008 and *Luboch*, cited above, § 79). It follows that this part of the application must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed 50,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

46. The Government contested the claim in respect of pecuniary damage. If the Court were to find a violation in the present case, they invited the Court to rule that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

47. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. It is not for the Court to speculate on what might have been the outcome of the proceedings had they complied with the fairness requirements of Article 6 (*Jalloh v. Germany* [GC], no. 54810/00, § 128, ECHR 2006-...). It therefore rejects this claim. The Court also considers that in the particular circumstances of the case the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage which may have been sustained by the applicant (see, *Matyjek*, cited above, § 69).

B. Costs and expenses

48. The applicant also claimed 17,400 Polish zlotys (PLN) (approximately EUR 4,600) for the costs and expenses incurred before the domestic courts and PLN 13,300 (approximately EUR 3,500) for those incurred before the Court. As regards the first amount, it included court fees for the cassation and appeal proceedings in the amount of PLN 1,681 and PLN 750 respectively and PLN 15,000 for the costs of legal representation of the applicant before the domestic courts at three instances as documented by the copies of invoices. With respect to the costs of the proceedings before the Court the applicant's lawyer provided copies of invoices for the costs of legal representation, travel and translation.

49. The Government considered that these claims were excessive.

50. 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 3,000 covering costs under all heads.

C. Default interest

51. 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 preliminary objection concerning non-exhaustion of domestic remedies;
2. *Declares* the complaint under Article 6 of the Convention regarding the unfairness of the proceedings admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention taken in conjunction with Article 6 § 3 and *dismisses*, in consequence, the Government's preliminary objection;
4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained;
5. *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 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into Polish zlotys at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President