



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

THIRD SECTION

**CASE OF ROGELJ v. SLOVENIA**

*(Application no. 21415/02)*

JUDGMENT

STRASBOURG

3 March 2009

**FINAL**

*14/09/2009*

*This judgment may be subject to editorial revision.*



**In the case of Rogelj v. Slovenia,**

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

Josep Casadevall, *President*,

Elisabet Fura-Sandström,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Ineta Ziemeļe,

Luis López Guerra,

Ann Power, *judges*,

and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 10 February 2009,

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

**PROCEDURE**

1. The case originated in an application (no. 21415/02) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Slovenian national, Mr Marjan Rogelj (“the applicant”), on 19 May 2002.

2. The Slovenian Government (“the Government”) were represented by their Agent, Mr L. Bembič, State Attorney General.

3. The applicant alleged under Article 6 § 1 of the Convention that the length of the domestic court proceedings to which he was a party had been excessive. He further alleged that the proceedings concerning his sick leave had been unfair and discriminatory and, with respect to the first set of proceedings, that his right to a fair and public hearing had been violated. In substance, he also complained under Article 13 about the lack of an effective domestic remedy in respect of the excessive length of the proceedings.

4. On 28 September 2006 the President of the Third Section decided to communicate the complaints concerning the length of proceedings and the lack of remedies in that respect 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 1953 and lives in Ljubljana.
6. The applicant has been a self-employed designer since 1972.
7. On 8 April 1990 the applicant was injured in a car accident which happened on a business trip. It appears that the applicant has since then been on sick leave for most of the time. However, for certain periods the Health Insurance Institute (*Zavod za zdravstveno zavarovanje* – “the HII”) recognised his full or partial working capability.

#### A. First set of proceedings

8. On 10 January 1996 the Supreme Court (*Vrhovno sodišče*), in a non-public session, rejected the applicant’s claim concerning the HII’s decision granting the applicant a right to be absent from his work on a part-time basis until 25 February 1993.
9. On 22 April 2000 the applicant lodged a constitutional appeal. On 16 October 2001 the Constitutional Court (*Ustavno sodišče*) dismissed the appeal as being out of time. This decision was served on the applicant on 21 November 2001.

#### B. Second set of proceedings

10. On 15 April 1994 the HII issued a decision finding that the applicant was fully capable of working.
11. On 30 June 1994 the applicant lodged a claim with the Ljubljana Court of Associated Labour (*Sodišče združenega dela v Ljubljani*) seeking annulment of the aforementioned decision, a recognition of his reduced working capability and entitlement to invalidity insurance benefit.
12. On 28 December 1994 the applicant gave a statement to a judge on duty urging the court to proceed with his case swiftly.
13. The (renamed) Ljubljana Labour and Social Court (*Delovno in socialno sodišče v Ljubljani*) held a hearing on 28 November 1996.
14. On 21 January 1997 the court received an expert’s opinion.
15. On 5 February 1997 the court held a hearing.
16. The court scheduled a new hearing for 26 March 1997 in order to examine an orthopaedist. The hearing was eventually cancelled since the expert had been absent owing to some professional commitments.

17. After holding a hearing on 17 June 1997, the court decided to deliver a written judgment rejecting the applicant's claim. The judgment was served on the applicant on 4 July 1997.

18. The applicant appealed to the Ljubljana Higher Labour and Social Court (*Višje delovno in socialno sodišče v Ljubljani*).

19. On 23 July 1998 the Ljubljana Higher Labour and Social Court rejected the applicant's appeal. The court tried several times to serve its decision on the applicant (on 26 October 1998, 10 November 1998 and on 10 December 1998) at the same address in Celje where it had served the decision of 17 June 1997. The decision was eventually served on 14 January 1999 through a colleague of the applicant at work.

20. Subsequently, the applicant lodged an appeal on points of law with the Supreme Court but it was rejected on 12 October 1999. The court again tried several times to serve this decision (on 10 and 30 November 1999, on 21 December 1999 and on 11 January 2000). The decision was served at the applicant's three different addresses, two in Celje and one in Ljubljana. On 20 January 2000 the court process server left a notice in the applicant's mailbox at his home in Ljubljana. The decision was eventually served on the applicant on the first-instance court's premises on 23 February 2000.

21. On 22 April 2000 the applicant lodged a constitutional appeal which also concerned the decision of the Supreme Court of 10 January 1996 (see paragraph 8 above).

22. On 16 October 2001 the Constitutional Court dismissed the applicant's appeal concerning the above proceedings as manifestly ill-founded. This decision was served on the applicant on 21 November 2001.

### **C. Third set of proceedings**

23. On 11 November 1996 the HII found the applicant incapable of working in the period between 7 June 1995 and 7 August 1995.

### **D. Fourth set of proceedings**

24. On 18 June 1998 the Ljubljana Labour and Social Court upheld the applicant's claim against the HII finding that he had been incapable of working also between 30 November 1996 and 13 February 1997.

### **E. Fifth set of proceedings**

25. On 12 October 1999 the applicant challenged an HII decision of 26 July 1999 before the Ljubljana Labour and Social Court.

26. On 10 February 2000 the court held a hearing.

27. On 19 April 2000 the court received the opinion of the expert appointed in the case.

28. On 31 May 2000 the court held a hearing. The applicant, who received a notice inviting him to attend the hearing on 11 May 2000, did not appear at the hearing. The court nevertheless gave a ruling, quashed the disputed HII decision and upheld the applicant's claim. It found that the applicant, who had been on sick leave with interruptions since 14 February 1998 and after 1 May 1999, was temporarily incapable of working also in the period between 9 April 1999 and 1 May 1999. This decision was served on the applicant on 6 July 2000.

29. The applicant appealed, claiming that the first-instance court should also have decided about his incapacity to work in the period after 25 May 1999.

30. On 7 February 2002 the Higher Labour and Social Court quashed the first-instance court's judgment and remitted the case to the first-instance court for re-examination.

31. On 7 November 2002 the court held a hearing.

32. Subsequently, the court attempted on three occasions to serve notice inviting the applicant to the hearing scheduled for 23 January 2003 but was unsuccessful. The applicant, however, appeared at the hearing together with a substitute of his representative. After the hearing, the court gave a ruling and upheld the applicant's claim in part. This decision was served on the applicant's representative on 19 February 2003.

33. On 17 April 2003 the Higher Labour and Social Court partly upheld the applicant's appeal and remitted the respective part for re-examination.

34. The hearing scheduled for 21 August 2003 was cancelled owing to the fact that the applicant's representative had rescinded his power of attorney. Consequently, the applicant had requested free legal aid, which had not been granted at the time the hearing was held.

35. On 28 October 2003 the applicant was granted free legal aid and subsequently assigned a lawyer.

36. The next hearing was scheduled for 11 March 2004. The court again tried unsuccessfully to serve notice of the hearing on the applicant. The applicant's representative eventually received the notice on 3 February 2004.

37. Since none of the parties appeared at the hearing of 11 March 2004 despite being invited, the court decided to stay the proceedings (*mirovanje postopka*). This decision was served on the applicant's representative on 12 March 2004.

38. On 14 July 2004, given that none of the parties requested the court to resume the proceedings within four months from the date the proceedings were stayed, the court decided to terminate the proceedings on the basis of the assumption that the applicant had withdrawn his claim. This decision was served on the applicant's representative on 16 July 2004.

39. The applicant appealed. On 24 September 2004 the Higher Labour and Social Court rejected the applicant's appeal. This decision was served on the applicant's representative on 5 October 2004.

40. On 10 January 2005 the applicant lodged a motion at the Higher Labour and Social Court, claiming that he had learned that the proceedings had been terminated only at the end of December 2004. The court responded that the decision had been served on his representative in accordance with the civil procedure rules.

41. On 11 March 2005 the applicant examined the file at the Higher Labour and Social Court.

## II. RELEVANT DOMESTIC LAW

### A. The Act on the Protection of the Right to a Trial without Undue Delay

42. The Act on the Protection of the Right to a Trial without Undue Delay (*Zakon o varstvu pravice do sojenja brez nepotrebnega odlašanja*, Official Journal, No. 49/2006) has been implemented since 1 January 2007. Under its sections 1 and 2, the right to a trial within a reasonable time is guaranteed for a party to court proceedings, a participant under the Act governing non-contentious proceedings and an injured party in criminal proceedings.

43. Section 25 lays down the following transitional rules in relation to applications already pending before the Court:

#### **Section 25 - Just satisfaction for damage sustained prior to implementation of this Act**

“(1) In cases where a violation of the right to a trial without undue delay has already ceased and the party had lodged a claim for just satisfaction with the international court before the date of implementation of this Act, the State Attorney's Office shall offer the party a settlement on the amount of just satisfaction within four months of the date of receipt of the case referred by the international court for the settlement procedure. The party shall submit a settlement proposal to the State Attorney's Office within two months of the date of receipt of the proposal of that Office. The State Attorney's Office shall decide on the proposal as soon as possible and within four months at the latest....

(2) If the proposal for settlement referred to in the first paragraph of this section is not acceded to or the State Attorney's Office and the party fail to negotiate an agreement within four months of the date on which the party submitted its proposal, the party may bring an action before the competent court under this Act. The party may bring an action within six months of receiving the State Attorney's Office reply that the party's proposal referred to in the previous paragraph was not acceded to, or after the expiry of the period fixed in the previous paragraph for the State Attorney's Office to decide to proceed with a settlement. Irrespective of the type or amount of the

claim, the provisions of the Civil Procedure Act concerning small claims shall apply in proceedings before a court.”

## **B. Relevant procedural rules applicable to civil proceedings**

44. Further to section 14 of the Labour and Social Courts Act (*Zakon o delovnih in socialnih sodiščih*, Official Gazette of the Republic of Slovenia no. 19/1994), as in force at the material time, the provisions governing civil procedure were to be applied to proceedings before the Labour and Social Courts.

45. According to section 209 of the Civil Procedure Act (*Zakon o pravdnem postopku*, Official Gazette of the Republic of Slovenia no. 26/1999), the court should stay the proceedings if, *inter alia*, none of the parties have appeared at a hearing. A party to proceedings can request the court to resume the proceedings after three months have passed from the date the proceedings were stayed and no later than four months from that date (section 210). Section 210 further provides that in the event that none of the parties requests the court to resume the proceedings, it will be assumed that the claimant has withdrawn his claim and the proceedings will be terminated.

## **THE LAW**

### **I. ALLEGED VIOLATION OF ARTICLE 6 § 1 (LENGTH OF PROCEEDINGS) AND ARTICLE 13 OF THE CONVENTION**

46. The applicant complained that the proceedings to which he was a party had been excessively long. He relied on Article 6 § 1 of the Convention, which reads as follows:

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

47. In substance, the applicant further complained that the remedies available for excessively long proceedings in Slovenia were ineffective.

Article 13 of the Convention reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

## A. Admissibility

### *1. The first, third and fourth sets of proceedings*

48. In accordance with Article 35 § 1 of the Convention, the Court may only deal with a matter after all domestic remedies have been exhausted and within a period of six months from the date on which the final decision was taken.

49. As to the first set of proceedings, the Court notes that the Supreme Court rejected the applicant's claim on 10 January 1996. The applicant lodged a constitutional appeal against this decision only on 22 April 2000, which was thus rejected as being out of time. The applicant has therefore failed to comply with the requirements of Article 35 § 1 and this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

50. As regards the third and fourth sets of proceedings, the Court notes that the last decisions in the cases were taken on 11 November 1996 and on 18 June 1998 respectively. Accordingly, any length-of-proceedings issue to which the applicant's complaint under Article 6 § 1 may give rise was introduced outside the time-limit set by Article 35 § 1 of the Convention.

51. It follows that the applicant's complaints with regard to the length of the third and fourth sets of proceedings must be rejected for failure to comply with the six-month rule within the meaning of Article 35 §§ 1 and 4 of the Convention.

### *2. The second and fifth sets of proceedings*

#### **(a) The Government's objection as regards the six-month time limit**

52. In the Government's view, the part of the application concerning the second set of proceedings had been lodged outside the six-month time-limit. In this connection, the Government submitted that the judgment of the Supreme Court of 12 October 1999, which was served on the applicant on 23 February 2000, had to be regarded as the final decision for the purposes of Article 35 § 1.

53. The applicant did not comment on this issue.

54. The Court notes that, after the applicant's appeal on points of law was rejected on 12 October 1999, the applicant lodged a constitutional appeal which was rejected as inadmissible. The Court observes that the proceedings before the Constitutional Court were brought by the applicant for the purpose of challenging the constitutionality of the lower courts' decisions. The Court further notes that according to its established case-law, any proceedings, including before the Constitutional Court, that could influence the outcome of proceedings before the lower courts fall within the

scope of Article 6 (see, for example, *Šubinski v. Slovenia*, no. 19611/04, § 69, 18 January 2007). As the Government have not put forward any argument which would require the Court to depart from its established case-law, it should be considered that the six-month period started on 21 November 2001 when the Constitutional Court's decision was served on the applicant.

55. It follows, therefore, that the Government's objection must be rejected.

**(b) The Government's objection as regards the exhaustion of domestic remedies**

56. The Government furthermore pleaded non-exhaustion of domestic remedies with respect to the second and fifth sets of proceedings. They relied on the remedies which had been available to individuals before the Act on the Protection of the Right to a Trial without Undue Delay (the "2006 Act") became operational, that is on 1 January 2007. In addition they submitted that the 2006 Act provided for effective remedies as regards the length of proceedings.

57. The applicant contested that argument, claiming that the remedies available were not effective.

58. The Court notes that it has already found that the remedies available in respect of length-of-proceedings complaints prior to the entry into force of the 2006 Act could not be considered effective (*Lukenda v. Slovenia*, no. 23032/02, ECHR 2005-X). As regards the remedies available under the 2006 Act, the Court notes that section 25 of the 2006 Act explicitly refers to proceedings before international courts and provides for certain remedies in cases of domestic proceedings which had terminated before 1 January 2007. However, the Court found in the *Grzinčič* judgment that the conditions laid down in that section were not fulfilled as regards applications concerning terminated proceedings which had been notified to the Slovenian Government before 1 January 2007, such as the present application (see *Grzinčič v. Slovenia*, no. 26867/02, § 67, 3 May 2007).

59. The Court therefore notes that the present application calls for similar findings to those given in the relevant part of the *Grzinčič* judgment (*ibid.*, § 68), in which the Court dismissed the Government's objection of non-exhaustion of domestic remedies because it found that the legal remedies at the applicant's disposal were ineffective.

60. The Court finds that the Government have not submitted any convincing arguments which would require the Court to depart from its established case-law in this connection.

61. It follows that the Government's objection concerning non-exhaustion of domestic remedies must also be rejected.

62. The Court further notes that the part of the application concerning the length of the second and fifth sets of proceedings is not manifestly ill-

founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

## **B. Merits**

### *1. Article 6 § 1*

#### **(a) Second set of proceedings**

##### *(i) Period to be taken into consideration*

63. The period to be taken into consideration began on 30 June 1994, the date on which the applicant instituted proceedings in the Ljubljana Court of Associated Labour, and ended on 21 November 2001, when the Constitutional Court decision was served on the applicant (see paragraph 54 above). It therefore lasted about seven years and four months, and four levels of jurisdiction were involved.

##### *(ii) Applicable criteria*

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

65. The Government argued that the proceedings were relatively complex. In addition, the Government argued that the court unsuccessfully tried to serve its decisions on the applicant on several occasions. In the Government's view, the length of the proceedings was therefore attributable exclusively to the applicant and not to the judicial authorities, which "had constantly acted in compliance with the domestic law".

66. The Court considers that the subject matter did not by itself present special difficulties with regard to the facts or the law and finds that the issue at stake in the proceedings could, in principle, be regarded as of importance for the applicant.

67. The Court further reiterates that only delays attributable to the State may justify a finding of a failure to comply with the "reasonable time" requirement (see *Ciricosta and Viola v. Italy*, 4 December 1995, § 28, Series A no. 337-A).

68. While the respondent State cannot be held responsible for all delays in the proceedings, as, for example, the applicant indeed caused certain difficulties and delays for the service on him of decisions and summonses (see paragraphs 19 and 20 above), the Court finds no satisfactory

explanation for the delay of three years in the first-instance proceedings; in particular, the court remained completely inactive for two years and five months, between the date the applicant instituted the proceedings, that is 30 June 1994, and the first hearing in the case, that is 28 November 1996.

69. In the light of the criteria laid down in its case-law (see, *mutatis mutandis*, *Repas v. Slovenia*, no. 10288/02, § 23, 6 April 2006, and *Kotnik v. Slovenia*, no. 17330/02, §§ 15-17, 13 April 2006), the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

70. There has accordingly been a breach of Article 6 § 1.

**(b) Fifth set of proceedings**

*(i) Period to be taken into consideration*

71. The period to be taken into consideration began on 12 October 1999, the date the applicant instituted proceedings in the Ljubljana Labour and Social Court, and ended on 5 October 2004, when the decision of the Higher Labour and Social Court was served on the applicant. It therefore lasted about five years, and two levels of jurisdiction were involved. Owing to a number of remittals, the case was examined at six instances.

*(ii) Applicable criteria*

72. As to the fifth set of proceedings, the Government argued that the case had been a relatively complex one. They further submitted that the matter at stake had obviously not been particularly important for the applicant, since he had not appeared at hearings and had not collected the court’s summonses on several occasions.

73. The Court notes that in the period of five years, the applicant’s case was considered at six instances. Taking into consideration the number of instances involved in deciding the case, the Court cannot conclude that the courts were inactive in these proceedings. On the contrary, it notes that on some occasions the case was decided by the courts of first and second instance very swiftly.

74. The Court moreover notes that the applicant, besides not appearing at the hearing of 31 May 2000, which was held nevertheless (see paragraph 28 above), also failed to attend the hearing of 11 March 2004, without submitting any plausible explanation. As a result, the court first stayed and eventually terminated the proceedings based on the assumption that the applicant had withdrawn his claim (see paragraphs 37 and 38 above). The Court therefore considers that the applicant did not display the diligence to be expected of a claimant; accordingly, what was at stake for the applicant in the domestic proceedings could not be seen as of significant importance to him.

75. Finally, while it is true that the remittal of cases for re-examination ordered as a result of errors committed by lower courts may disclose a deficiency in the judicial system (see, for example, *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003), the Court cannot conclude, having regard to the manner in which the proceedings were conducted and the behaviour of the applicant, that in the present case the length of the proceedings was such as to breach the “reasonable time” requirement.

76. There has accordingly been no violation of Article 6 § 1.

## 2. Article 13

77. Article 13 of the Convention guarantees an “effective remedy before a national authority” to everyone who claims that his rights and freedoms under the Convention have been violated (see *Klass and Others v. Germany*, 6 September 1978, § 64, Series A no. 28). However, Article 13 requires a remedy in domestic law only in respect of an alleged grievance which is an arguable one in terms of the Convention (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). Thus the effect of this provision is to require the existence of an effective remedy to deal with the substance of an “arguable complaint” and to grant appropriate relief (see *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

78. The Court further reiterates that the existence of an actual breach of another provision of the Convention (a “substantive” provision) is not a prerequisite for the application of Article 13 (see *Klass and Others*, cited above, § 64). The fact that the applicant’s allegations were not ultimately substantiated does not prevent his claim from being considered an arguable one for the purposes of Article 13 of the Convention (see *Kaya v. Turkey*, 19 February 1998, § 107, *Reports of Judgments and Decisions* 1998-I).

79. In the present case the Court found a violation of Article 6 § 1 in respect of the second set of proceedings. As far as the fifth set of proceedings is concerned, the Court found the applicant’s claim under Article 6 § 1 admissible (see paragraph 62 above). Hence, the applicant had an “arguable complaint”, notwithstanding the Court’s finding that the length of the proceedings before the domestic courts in the fifth set of proceedings did not infringe the “reasonable time” requirement. Consequently, he should have the right under Article 13 to be afforded a remedy by the national authorities to determine whether or not the second and fifth sets of proceedings were excessively long.

80. The Court notes that the objections and arguments as to the effectiveness of the domestic remedies put forward by the Government have been rejected in earlier cases (see paragraphs 58 to 61 above, and *Grzinčič*, cited above, §§ 75 -76) and sees no reason to reach a different conclusion in the present case.

81. Accordingly, the Court considers that there has been a violation of Article 13 in respect of the second and fifth sets of proceedings on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling on whether his case had been heard within a reasonable time, as guaranteed by Article 6 § 1.

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

82. The applicant complained that the proceedings concerning his sick leave, that is the second and fifth sets of proceedings, had been unfair and discriminatory. The applicant further submitted that he had not received any legal aid during the second set of proceedings. With respect to the first set of proceedings, the applicant also complained about the lack of a public hearing.

83. He relied on Articles 6 § 1 and 14 of the Convention. The former, as far as relevant, provides:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law.”

Article 14 reads as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

84. As far as the applicant’s complaint related to the lack of a public hearing in the first set of proceedings is concerned, the Court notes that the applicant failed to comply with procedural requirements laid down in Slovene law for lodging a constitutional complaint (see paragraph 49 above). It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

85. Regarding the alleged unfairness and discrimination in the fifth set of proceedings, the Court observes that the impugned proceedings ended with the second-instance court’s decision of 24 September 2004. The Court further observes that the applicant did not lodge a constitutional complaint against this decision. Accordingly, he has failed to exhaust the domestic remedies available to him in this respect within the meaning of Article 35 § 1 of the Convention. It follows that these complaints must be rejected pursuant to Article 35 § 4.

86. As regards the complaints relating to the second set of proceedings, the Court finds that the applicant has not adduced any evidence capable of supporting his allegations that his right under Article 6 to a “fair hearing” before an “impartial tribunal”, alone or in conjunction with Article 14, was

breached in the present case. It also notes that the applicant did not submit any documents showing that he had asked for free legal aid, nor did he submit anything which would indicate that the lack of legal representation had the effect of depriving him of effective access to the court. These complaints are unsubstantiated, and it thus follows that this part of the application must be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

87. 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**

88. The applicant claimed 255,960 euros (EUR) in respect of pecuniary damage and EUR 18,840 in respect of non-pecuniary damage.

89. The Government contested the claim.

90. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 3,400 under that head.

#### **B. Costs and expenses**

91. The applicant also claimed a total of EUR 574 for costs and expenses. According to the applicant's submissions, in which he itemised his claim, this sum comprised EUR 252 for costs and expenses in the proceedings before the domestic courts, and EUR 322 for costs and expenses in the proceedings before this Court.

92. The Government contested the claim.

93. Under the Court's case-law, an applicant is entitled to the reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers that the applicant, who was not represented by a lawyer, must have had to bear expenses in connection with the proceedings before the Court. The Court considers it

reasonable to award the applicant EUR 322, the full sum he claimed for the proceedings before the Court.

### **C. Default interest**

94. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

### **FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Declares* the complaint concerning the length of the second and fifth sets of proceedings and the effectiveness of the legal remedies in this respect admissible;
2. *Declares* the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the second set of proceedings;
4. *Holds* that there has been no violation of Article 6 § 1 of the Convention in respect of the fifth set of proceedings;
4. *Holds* that there has been a violation of Article 13 of the Convention in respect of the second and fifth sets of proceedings;
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 3,400 (three thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage and EUR 322 (three hundred and twenty-two euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

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

Stanley Naismith  
Deputy Registrar

Josep Casadevall  
President