



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

FIFTH SECTION

CASE OF PLAKHTEYEV AND PLAKHTEYEVA v. UKRAINE

(Application no. 20347/03)

JUDGMENT

STRASBOURG

12 March 2009

FINAL

12/06/2009

This judgment may be subject to editorial revision.

In the case of Plakhteyev and Plakhteyeva v. Ukraine,

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

Peer Lorenzen, *President*,

Rait Maruste,

Karel Jungwiert,

Mark Villiger,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

Stanislav Shevchuk, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 17 February 2009,

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

PROCEDURE

1. The case originated in an application (no. 20347/03) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Ukrainian nationals, Mr Fyodor Pavlovich Plakhteyev and Ms Valentina Grigoryevna Plakhteyeva (“the applicants”), on 31 May 2003.

2. The applicants were represented by Ms L.M. Galchenko, a lawyer practising in Odessa. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev.

3. The applicants complained under Article 6 § 1 of the Convention that they had been denied access to a court in respect of their claims for damages. They further complained under Article 1 of Protocol No. 1 of a violation of their property rights on account of wrongful acts and decisions by the local tax office.

4. On 15 December 2002 the President of the Second 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 applicants were born in 1958 and 1931 respectively and live in Beryozovka, the Odessa region. The first applicant is a farmer who specialises in arable crops. The second applicant is his mother, a pensioner.

6. On 24 January 2001 the first applicant was stopped by tax police officers when driving a lorry leased from his mother. On checking the lorry the officers discovered 500 kilos of wheat, 1,400 kilos of flour and 3,000 kilos of wheat middlings for which the applicant had no proper documents. The police officers drew up a report on an administrative offence and seized the lorry and the load pending adjudication of the case by the court.

7. On 26 January 2001 the Trostyanets District Court (the “District Court”) found that the first applicant had transported the property of a third person for sale without a relevant business permit and was therefore guilty of unlawful business activity (an administrative offence). The District Court fined the applicant 51 Ukrainian hryvnias (UAH) and ordered the confiscation of the flour and wheat middlings. It further held that the 500 kilos of wheat were not subject to forfeiture as they belonged to the first applicant.

8. According to the applicants, after the judgment of 26 January 2001 they applied on several occasions to the Trostyanets Town Tax Office (the “Tax Office”), requesting that the lorry and the wheat load, which were not covered by the confiscation order, be returned to them. Their requests were rejected however.

9. On an unspecified date the confiscated products were sold and the funds were transferred to the State budget.

10. On 19 June 2001 the President of the Vinnytsya Region Court (subsequently renamed as the Vinnytsya Regional Court of Appeal), following an extraordinary review, quashed the judgment of 26 January 2001, stating that the conviction of the first applicant and the imposed penalties had been unsubstantiated. He therefore closed the case.

11. On 15 August 2001 the Tax Office returned the lorry and the wheat load to the applicants. According to the applicants the wheat load had deteriorated significantly and the lorry was damaged when returned.

12. On 3 January 2002 the applicants lodged a claim with the Vinnytsya Region Court of Appeal against the District Court and the Tax Office seeking damages for the wrongful conviction; for the groundless seizure and lengthy detention of their property; and for the deterioration of their property when in charge of the Tax Office. They claimed in particular that the Tax Office unlawfully retained the lorry and the wheat load despite the

fact that those objects were not covered by the confiscation order; and that the lorry and the wheat load had significantly deteriorated when returned.

13. On 20 January 2002 the Vinnytsya Regional Court of Appeal declared the claim inadmissible, stating, in particular:

“According to Article 62 of the Constitution, compensation for pecuniary and non-pecuniary damage caused in the course of the administration of justice can be paid by the State to a person who has been groundlessly sentenced provided that the judgment in a criminal case has been quashed as unfair.

However, even in such a case the damage is compensated by the State, and not by a court or a judge.

Therefore, the court (or judge) as a body (or individual) administering justice cannot be a defendant in civil litigation, as the law provides another mechanism for correcting mistakes and irregularities committed in the course of the administration of justice.”

The court did not give any reasons why the part of the applicants’ claim submitted against the Tax Office could not be considered by the court.

14. By a letter of 23 March 2002 the Deputy Chairman of the State Tax Administration confirmed to the first applicant that he could claim compensation for damage, allegedly inflicted by the Tax Office, by filing a relevant civil suit with a court.

15. On an unspecified date the State Tax Administration, having made an internal inquiry, established that the Tax Office had failed to take the necessary steps to return to the owners the lorry and the wheat load in time. It further concluded that disciplinary measures were needless since the relevant official had retired.

16. On 7 May 2002 the applicants lodged with the Supreme Court a cassation appeal against the decision of 20 January 2002, contending that the refusal to consider their claim against the District Court and the Tax Office had been unlawful.

17. On 21 August 2002, following their request of 5 August 2002, the Tax Office reimbursed to the applicants the value of the confiscated products.

18. On 15 November 2002 the Supreme Court rejected the applicants’ cassation appeal against the decision of 20 January 2002, finding that there had been no procedural irregularities. The applicants were not present at the hearing. By a letter of 10 December 2002 the Supreme Court informed the applicants of that decision.

II. RELEVANT DOMESTIC LAW

A. The Constitution of 28 June 1996

19. Section 55 of the Constitution provides, *inter alia*, that everyone is guaranteed the right to challenge in court the decisions, actions or omissions of bodies of State power, bodies of local self-government, officials and officers.

20. Section 56 of the Constitution provides that everyone has the right to receive compensation from the State or municipal authorities for pecuniary and non-pecuniary damage incurred as a result of the unlawful actions or omissions of State bodies, municipal authorities or their officials in the course of the exercise of their powers.

21. Section 62 of the Constitution concerns the presumption of innocence and provides, *inter alia*, that if the sentence in a criminal case is quashed as unfair the State must provide compensation for any pecuniary and non-pecuniary damage resulting from the groundless conviction.

B. The Civil Code of 18 July 1963 (in the wording relevant at the material time)

22. Section 442 of the Code provided that compensation was to be paid for damage caused by the acts of State entities and public officials in the course of the exercise of their administrative powers in accordance with the general rules, unless the law provided otherwise.

C. The Administrative Offences Code of 7 December 1984 (in the wording relevant at the material time)

23. Section 265 of the Code provided, *inter alia*, that objects and documents used to commit an administrative offence could be seized by the competent authorities pending adjudication of the administrative case. Depending on the outcome of the administrative proceedings the seized objects and documents were thereafter to be either confiscated, destroyed, or returned to the relevant persons.

24. Section 287 of the Code provided that a decision imposing an administrative penalty could be appealed, except for decisions given by the first-instance court. The latter were final and were not subject to the ordinary administrative appeal procedure, unless the legislation provided otherwise.

D. The Enforcement Proceedings Act of 21 April 1999 (in the wording relevant at the material time)

25. Section 3 of the Act provided, *inter alia*, that court judgments in administrative cases were to be enforced by the State Bailiffs' Service as regards pecuniary penalties.

THE LAW

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

26. The applicants complained under Articles 6 § 1 and 13 of the Convention that they had been denied access to a court in respect of their claim for damages. The Court, which is master of the characterisation to be given in law to the facts of the case, has decided to examine the problem raised by the applicants solely under Article 6 § 1 of the Convention, which reads, in so far as relevant, as follows:

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

A. Admissibility

1. The submissions of the parties

27. The Government maintained that the applicants had failed to comply with the six-month rule since the final decision in the course of the exhaustion of domestic remedies had been taken by the Supreme Court on 15 November 2002, i.e. more than six months before the complaint was submitted to the Court (31 May 2003). The Government further contended that the applicants had not exhausted all remedies, stating that they should have tried to lodge another separate claim against the Tax Office.

28. The applicants disagreed.

2. The Court's assessment

a. Six-month rule

29. The Court reiterates that, according to Article 35 § 1 of the Convention, it “may only deal with [a] matter ... within a period of six months from the date on which the final decision was taken”. The Commission and the Court have consistently interpreted this rule to the

effect that the six-month period begins to run from the moment when the applicant has learned or should have learned of the final domestic decision or, if no remedy is available, of the act of which he complains (see in this respect *Hilton v. the United Kingdom* (dec.), no. 12015/86, 6 July 1988; and *Sutyazhnik v. Russia* (dec.), no. 8269/02, 2 March 2006). It is for the State which pleads a failure to comply with the six-month rule to establish the date on which the applicant learned of the final domestic decision (see *Köksal v. the Netherlands* (dec.), no. 31725/96, 19 September 2000).

30. In the present case the applicants were informed of the decision of the Supreme Court, which was given in their absence, by a letter dated 10 December 2002. The Government have not shown that the applicants were notified of the decision prior to this date. The Court therefore concludes that the applicants, having been notified of the decision of the Supreme Court after 10 December 2002 and having applied to the Court on 31 May 2003, complied with the six-month rule. Accordingly, it dismisses the Government's objection in that regard.

b. Non-exhaustion of domestic remedies

31. The Court notes that the Government's objection as to the non-exhaustion of domestic remedies is closely linked to the applicants' complaint under Article 6 § 1 of the Convention. In these circumstances, it joins the objection to the merits of the applicants' complaint.

c. Conclusion as to admissibility

32. 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.

B. Merits

1. The submissions of the parties

33. The Government submitted that the applicants had been denied access to a court in respect of their claim legitimately and proportionately since judges and courts could not be sued for decisions taken in the course of the administration of justice. The restriction was therefore compatible with the requirements of Article 6 § 1 of the Convention.

34. The applicants disagreed.

2. The Court's assessment

35. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a

court or tribunal. In this way it embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, pp. 17-18, §§ 35-36). The right is not however absolute. It may be subject to legitimate restrictions, for example, statutory limitation periods, security for costs orders, regulations concerning minors and persons of unsound mind (see *Stubbings and Others v. the United Kingdom*, judgment of 22 October 1996, *Reports* 1996-IV, pp. 1502-3, §§ 51-52; and *Tolstoy Miloslavsky v. the United Kingdom*, judgment of 13 July 1995, Series A no. 316-B, pp. 80-81, §§ 62-67). Where the individual’s access is limited either by operation of law or in fact, the Court will examine whether the limitation imposed impaired the essence of the right and in particular whether it pursued a legitimate aim and there was a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Ashingdane v. the United Kingdom*, judgment of 28 May 1985, Series A no. 93, pp. 24-25, § 57).

36. The Court notes that the applicants’ claim was left unexamined without adjudication on the merits, on the ground that the defendant was a court and thus immunity from the jurisdiction applied. The Court recalls that it has dealt with the issue of the immunity of judges in a case where it concluded that such immunity pursued a legitimate aim, as it was a means of ensuring the proper administration of justice. It further held that such restriction was proportionate in the light of the circumstances of that case (see *Ernst and Others v. Belgium*, no. 33400/96, §§ 47-57, 15 July 2003).

37. In the instant case, however, the Court does not need to determine whether the restriction on the applicants’ right of access to a court, which was a consequence of the special immunity from jurisdiction possessed by judges and courts, was proportionate in the light of the circumstances of the case, since there is a more evident reason to doubt that the applicants’ right of access to a court was respected. In particular, the Court is preoccupied by the fact that the applicants’ claim was lodged not only against the District Court, which indeed had immunity against civil suit, but also against the Tax Office, which did not enjoy any such immunity. The Court notes that the applicants explicitly indicated the Tax Office as another defendant in their suit and alleged (i) that they had been unable to recover the lorry and the wheat load from the Tax Office after the adjudication of the administrative case by the court when there was no longer any legal ground to detain the applicants’ property; and (ii) that their property had deteriorated while in the charge of the Tax Office. Those grievances had nothing to do with the District Court and were clearly addressed to the Tax Office. However, the domestic courts were silent as to this part of the claim and did not give any reasons why it could not be considered in the course of adversarial proceedings. In particular, the Supreme Court rejected the

applicants' cassation appeal without giving any explanations on that account.

38. The Court notes that the Government's argument that the applicants should have introduced a separate claim solely against the Tax Office is not convincing. The violation complained of stems from the domestic courts' failure to determine judicially the claim that the applicants had already introduced, rather than from the absence of the general possibility of suing the Tax Office. The Court further notes that the domestic courts, when dealing with the applicants' claim, did not inform them that such a possibility was open to them. Indeed, it may well be that their decisions suggested to the applicants the opposite conclusion, namely that they had no prospect of having any part of their claim considered by a court. In any event, the Court considers that it would place an excessive and unreasonable burden on the applicants to require them to submit another separate claim against the Tax Office after they had validly introduced on in the initial proceedings. It therefore rejects the Government's objection as to non-exhaustion of domestic remedies and holds that the failure of the domestic authorities to determine the applicants' claim against the Tax Office deprived them of their right of access to a court. There has been therefore a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

39. The applicants complained of a violation of their property rights, alleging that the Tax Office had unlawfully seized and retained the products and the lorry; that part of the products had been unlawfully confiscated; and that another part together with the lorry, which were not covered by the confiscation order, had badly deteriorated when returned to the applicants. The applicants relied on Article 1 of Protocol No. 1, which reads as follows:

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

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

A. Admissibility

1. *The Government's submissions*

a. Six-month rule

40. The Government submitted at the outset that this complaint had been introduced outside the six-month period for the same reasons as the complaint under Article 6 § 1 of the Convention.

b. Non-exhaustion of domestic remedies

i. *Failure to apply to the State Bailiffs' Service*

41. The Government maintained that the applicants should have applied to the State Bailiffs' Service requesting that the judgment of 26 January 2001 be enforced as regards the recovery of the wheat load.

ii. *Failure to institute proceedings against the Tax Office*

42. The Government submitted that the applicants could have brought a case alleging misconduct by the Tax Office. They emphasised that the applicants had failed to seek damages for the deterioration of the seized property. In this regard the Government also presented a written statement of 15 August 2001 in which the first applicant had confirmed that the lorry was in good condition when he collected it from the Tax Office.

iii. *Failure to apply to the Tax Office*

43. The Government insisted that the applicants had not asked the Tax Office to reimburse the value of the confiscated objects prior to 5 August 2002, nor had they requested return of the objects, not covered by the confiscation order, in writing. Moreover, the applicants had refused to collect the lorry and the wheat load when they were offered the opportunity to do so. In the latter respect, the Government submitted the tax police officers' report of 3 February 2001, confirmed by two witnesses, documenting the refusal of the first applicant to collect the lorry.

2. *The applicants' submissions*

44. The applicants disagreed with the Government's submissions, insisting that they had complied with the six-month rule and that they had exhausted all the remedies which were available to them. They further contested the evidence submitted by the Government stating that it was not reliable. The applicants contended that they had repeatedly applied to the Tax Office, but that each request had been refused. They insisted that they had been unable to collect their property from the Tax Office for a long time

and emphasised that the property had deteriorated considerably while in charge of the Tax Office.

2. The Court's assessment

a. Six-month rule

45. The Court, having regard to its finding under Article 6 § 1 of the Convention as regards the applicants' compliance with the six-month rule (see paragraphs 29-30 above), rejects the Government's objection under this head.

b. Non-exhaustion of domestic remedies

46. As regards the applicants' failure to apply to the State Bailiffs' Service, the Court notes that the Government have not shown how the judgment of 26 January 2001 could have been enforced by the State Bailiffs' Service as regards the recovery of the wheat load because the judgment did not relate to the wheat but to the administrative penalties (see paragraph 25 above).

47. As regards the applicants' failure to institute court proceedings, the Court notes that the applicants did raise the relevant issues in their claim lodged on 3 January 2002 (see paragraph 12 above). Having regard to its finding under Article 6 § 1 above about the lack of access to a court (see paragraph 38 above) rejects this argument.

48. As regards the applicants' failure to apply to the Tax Office with relevant requests the Court considers that this argument is closely linked to the merits of the complaint under Article 1 of Protocol No. 1. It therefore joins it to the merits.

c. Conclusion as to admissibility

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.

B. Merits

1. The Parties' submissions

49. The Government maintained that there had been no violation of the applicants' property rights in so far as it was the applicants who failed to take necessary steps to collect the wheat load and the lorry from the Tax Office and receive the compensation.

50. The applicants disagreed.

2. *The Court's assessment*

a. **The applicable rule**

51. The Court notes that it is not disputed between the parties that the products and the lorry constituted the applicants' possessions for the purpose of Article 1 of Protocol No.1.

52. The Court further observes that the seizure of the products and the lorry, their retention by the authorities as well as the confiscation measure clearly constituted an interference with the applicants' rights under Article 1 of Protocol No.1.

53. The Court notes that the parties did not take a clear stance on the question of the rule of Article 1 of Protocol No. 1 under which the case should be examined. It observes that the seizure and retention of the objects by the authorities amounted to a restriction on their use by the applicants and thus fell under the scope of the second paragraph of Article 1 concerning "a control of the use of property" (see, *mutatis mutandis*, *Viktor Kononov v. Russia*, no. 43626/02, § 41, 24 May 2007). Likewise, the confiscation order, which was issued as a result of finding of the first applicant guilty of an administrative offence, falls into the concept of "penalty" fixed in the same rule (see *Phillips v. the United Kingdom*, no. 41087/98, § 51, ECHR 2001-VII).

b. **The compliance with the requirements of the second paragraph of Article 1 of Protocol No. 1**

54. It remains to be determined whether the interference was in accordance with the domestic law of the respondent State and whether it achieved a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see, among many other authorities, *Former King of Greece and Others v. Greece* [GC], no. 25701/94, § 89, ECHR 2000-XII, with further references).

55. The Court notes that the interference at question should be examined separately as regards (i) the period before 26 January 2001 when the administrative case against the first applicant was pending before the District Court; and (ii) the period after 26 January 2001 when the District Court delivered the judgment in that case.

i. As regards the period before 26 January 2001

56. The Court observes that the tax authorities seized and retained the products and the lorry in the course of administrative proceedings pursuant to the requirements of the domestic legislation (see paragraph 23 above). It further notes that there is no indication in the case file that the impugned measures had been unreasonable in the circumstances of the case. The Court

therefore does not discern any appearance of violation of Article 1 of Protocol No. 1 as regards this period.

ii. As regards the period after 26 January 2001 (in respect of the seized objects which were covered by the confiscation order)

57. The Court observes that on 19 June 2001 the confiscation order was quashed and on 21 August 2002 the applicants were compensated for the confiscation by the Tax Office (see paragraphs 10 and 17 above).

58. The applicants did not complain that the compensation had been insufficient, belated or in any other way inadequate. In these circumstances the Court finds that the applicants cannot be regarded as victims in respect of their complaint about unlawful confiscation as this violation was recognised at the national level and compensation was provided (see *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

iii. As regards the period after 26 January 2001 (in respect of the seized objects which were not covered by confiscation order)

59. The Court, however, notes that on 26 January 2001 the District Court ordered a confiscation only in respect of the part of the seized objects leaving aside the wheat load and the lorry (see paragraph 7 above).

60. It appears that from that date there was no legal basis for the retention of the objects which were not covered by the confiscation order, that is, the lorry and the load of wheat. However, those items were returned to the applicants only on 15 August 2001.

61. The Court does not accept Government's submissions to the effect that the applicants refused to collect the property and failed to claim compensation. It notes that even the tax authorities acknowledged that it had been the Tax Office's failure to return in time the objects which were not covered by the confiscation order (see paragraph 15 above). Indeed, it was rather for the authorities to take the necessary steps to return the objects they had seized, but not for the applicants to make regular visits to those authorities with the relevant requests. To the extent that the Government contended that the applicants should have brought the proceedings for compensation in this regard, the Court notes that in the proceedings which the applicants brought against the Tax Office (and which were subsequently not dealt with) the applicants made this claim.

62. The Court further notes that, based on the case file, it cannot establish beyond reasonable doubt whether the applicants' property had deteriorated and, if so, to which extent, when it was returned to the applicants. In any event it notes that the retention of the applicants' property for about six months and a half (between 26 January and 15 August 2001) without any legal ground amounted to a violation of the applicants' property rights.

63. In view of the above the Court rejects the Government's preliminary objection as to the non-exhaustion of domestic remedies and holds that there had been a violation of Article 1 of Protocol No. 1 on that account.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The applicants claimed UAH 1,180 (about 193 euros (EUR)) and UAH 225,625 (about EUR 36,838), respectively, as compensation for pecuniary damage. They further claimed UAH 500,000 (about EUR 81,635) and UAH 50,000 (about EUR 8,163.5), respectively, as compensation for non-pecuniary damage.

66. The Government submitted that the pecuniary and non-pecuniary damage claims were exorbitant and unsubstantiated as they were not supported by proper documents or vouchers.

67. The Court notes the issue under Article 41 of the Convention is how much pecuniary compensation, if any, should be granted in respect of the groundless retention of the applicants' property in the period between 26 January and 15 August 2001. The Court notes that the applicants have not made any submissions in this respect. In view of its findings under Article 6 § 1 of the Convention, which necessitate reopening of the domestic proceedings, the Court considers that it will be for the domestic courts to decide on this issue and rejects therefore the applicants' pecuniary damage claims.

68. As to compensation in respect of non-pecuniary damage, the Court notes that the applicants must have suffered some distress and anxiety on account of the violations found. Ruling on an equitable basis, as required by Article 41 of the Convention, it awards each of the applicants EUR 2,000.

B. Costs and expenses

69. The applicants did not submit any claim under this head; the Court therefore makes no award in this respect.

C. Default interest

70. 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 contentions concerning the exhaustion of domestic remedies in respect of the applicants' complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1; and rejects them after an examination on the merits;
2. *Dismisses* the remainder of the Government's preliminary objections;
3. *Declares* the complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 admissible;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
5. *Holds* that that there has been a violation of Article 1 of Protocol No. 1;
6. *Holds*
 - (a) that the respondent State is to pay to each applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of Ukraine 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 12 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President