



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

SECOND SECTION

CASE OF BEKER v. TURKEY

(Application no. 27866/03)

JUDGMENT

STRASBOURG

24 March 2009

FINAL

24/06/2009

This judgment may be subject to editorial revision.

In the case of Beker v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 3 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 27866/03) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Turkish nationals, Mrs Fadik Beker, Mr Özgür Beker, Mr Aytekin Beker and Ms Sibel Beker (“the applicants”), on 27 May 2003.

2. The applicants were represented by Mr Mesut Gündoğdu and Mr Ali Cemal Zülfikar, lawyers practising in Elazığ. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicants alleged in particular that their close relative Mustafa Beker’s right to life under Article 2 of the Convention had been violated by agents of the respondent State, either intentionally or due to negligence.

4. On 22 January 2008 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

THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1955, 1976, 1979 and 1983, respectively, and live in Ankara. The first applicant is the mother and the remaining three applicants are the brothers and sister of Mr Mustafa Beker, who was born in 1977 and was working as an expert corporal¹ in the special teams of the gendarmerie in Tunceli.

6. The facts of the case, as submitted by the parties and as they appear from the documents submitted by them, may be summarised as follows.

7. At around 9.20 a.m. on 8 March 2001 Mustafa Beker allegedly committed suicide by shooting himself in the head in the dormitory of the military barracks where he was stationed. A non-commissioned officer who arrived at the scene immediately checked for a pulse and realised that Mr Beker was still alive. At 9.30 a.m. he was taken to the infirmary in an ambulance.

8. The same day a First Lieutenant (“the military investigator”) carried out an inspection of the dormitory, drew a sketch of the place, questioned a number of Mr Beker’s colleagues and recorded their statements.

9. A pistol was found some distance away from the place where Mr Beker had fallen, but the exact distance is not specified in the sketch. The pistol had been cocked and had fired two rounds but had failed to fire a third time. Two spent bullet cases and two bullets – one of which was misshapen – were also found. It was established that the pistol belonged to one of Mr Beker’s colleagues, expert sergeant T.Y., who had left it in his locker just outside the dormitory. According to a document drawn up by the military investigator, Mr Beker had obtained the pistol by smashing the padlock on the locker with a stick.

10. Expert sergeant M.A., when questioned by the military investigator, stated that Mr Beker had stayed at the former’s house the previous night. Mr Beker had been drunk and in an agitated state. M.A. had been concerned about Mr Beker’s state and had taken his pistol away from him and then hidden it in his house. When he had woken up in the morning, Mr Beker had already left the house, leaving his pistol behind. He had found Mr Beker in a restaurant, drinking. They had then gone to the barracks where Mr Beker had unsuccessfully asked expert sergeant T.Y. for the key to T.Y.’s locker. M.A. had then started to walk away but turned back when he heard a

1. Expert corporals and expert sergeants are men who opt to stay in the army following the completion of their national service and who thus become paid employees of the armed forces.

gunshot; whereupon he saw Mr Beker on the floor, with a pistol next to his feet.

11. When questioned by a military prosecutor, expert sergeant T.Y. confirmed that he had seen M.A. and Mr Beker in the corridor and that the latter had asked him for his key to his locker. He had told Mr Beker that he did not have the key on him. He had then left to attend to business elsewhere in the barracks. He had left his pistol in his locker.

12. Expert sergeant M.K. told the military investigator that, between 9.10 and 9.15 a.m., he had been changing his clothes in front of his locker in the corridor when Mr Beker had approached him and asked him where T.Y.'s locker was. M.K. had then heard noises which he thought were coming from the area near Mr Beker's locker. Twenty to thirty seconds later he had heard two gunshots coming from the dormitory. When he had reached the dormitory he had seen Mr Beker lying on the floor with his head bleeding.

13. Four expert sergeants questioned by the military investigator and subsequently by the military prosecutor stated that they had been in their bunk beds in the dormitory when Mr Beker entered at around 9.15 a.m. and asked them to get up and start work. They had told Mr Beker that it was still too early to get up as their shifts did not start until 11 a.m. Mr Beker had then left the dormitory and they had heard noises coming from the locker area. Mr Beker had then re-entered the dormitory carrying a pistol. They had then heard him cock the pistol before they heard two gunshots within a second of each other. With the exception of one of the expert sergeants, none of them had seen Mr Beker shoot himself. None of the expert sergeants had heard Mr Beker talking or arguing with anyone before the shooting or seen anyone running away from the scene afterwards.

14. A number of Mr Beker's colleagues told the military prosecutor that he had been feeling low for the last couple of months and had been drinking a lot. He had fallen in love with a girl in January 2001 but his mother opposed their marriage.

15. Expert sergeant S.U. was the only person in the dormitory who claimed to have seen Mr Beker shoot himself. He told the military investigator that he had seen and heard Mr Beker fire once, using his right hand and aiming at the right side of his head. When he was subsequently questioned by the military prosecutor, he stated that he could not remember exactly how many shots he had heard as he had been in a state of shock. He added that, although he had been about five metres away from Mr Beker at the time, he had not actually seen Mr Beker shoot himself as he had covered his face with his hands.

16. According to a report prepared by the Tunceli public prosecutor the same day, the military authorities had requested him to assist them in the investigation by carrying out a preliminary examination of the body of Mr Beker, who had died before his arrival at the Tunceli State Hospital.

Mr Beker's body was formally identified by his colleague, expert sergeant M.A..

17. The prosecutor and a doctor first examined Mr Beker's clothes and observed that there were no bullet holes or any other marks on them. They observed a bullet entry hole on the left temple and a bullet exit hole on the right temple. A lack of gunpowder residue or burns on the skin next to the entry hole led the doctor to conclude that the shot had been fired at close but not at point-blank range. There were no other injuries on Mr Beker's body.

18. During the examination the prosecutor and the doctor smelt alcohol emanating from Mr Beker's body. Expert sergeant M.A. confirmed that Mr Beker had been drinking that morning. M.A. also informed the prosecutor and the doctor that Mr Beker had been right-handed and had always used his right hand when shooting during their military training.

19. The doctor secured plastic covers to Mr Beker's hands to preserve them for a subsequent swab test. The body was then sent to Elazığ Military Hospital, where a post-mortem examination was carried out the same day.

20. In the course of that examination, the pathologist observed no gunpowder residue next to the bullet entry hole and concluded that the shooting had occurred at point-blank range. The bullet entry hole was approximately two centimetres above the left eyebrow. The exit hole was next to the right ear. There were burnt and un-burnt gunpowder particles inside the bullet entry hole.

21. A blood sample was found to contain no alcohol and the cause of death was established as the destruction of the brain. The pathologist also took swabs from Mr Beker's hands for a forensic examination which found gunpowder residue on the outside of the deceased's right hand (report of 27 April 2001).

22. On 10 March 2001 the military investigator concluded his investigation. In a one-sentence conclusion, the military investigator stated that Mr Beker had "committed suicide as a result of a sudden bout of depression".

23. A lieutenant, who was Mr Beker's immediate commander and who knew him well, was recorded as stating that Mr Beker had been a very good soldier and that he had not had any psychological problems.

24. On 13 March 2001 Özgür Beker, who is one of the applicants and a brother of Mr Beker, asked the office of the military prosecutor for copies of the documents from the investigation file because the family had "suspicions surrounding his death".

25. On 12 April 2001 the lawyer for the applicants wrote to the office of the Elazığ military prosecutor and repeated the family's request for information and documents about the investigation into Mr Beker's "alleged suicide".

26. On 9 January 2002 the lawyer for the applicants wrote to the Ministry of Defence and again asked for information about the

investigation. The lawyer also stated in his letter that his clients had merely been informed by the military authorities that Mr Beker had committed suicide. However, neither he nor the family had been given any information or documents from the investigation file despite their written requests. The lawyer submitted that a number of anonymous telephone calls had been made to the mobile telephone which had been owned by Mr Beker and which had since been returned to the family. The callers had stated that Mr Beker had been murdered. The lawyer submitted that the lack of information about the investigation strengthened the family's conviction that Mr Beker had indeed been murdered.

27. A military prosecutor in Elazığ replied to the lawyer's letter on 30 January 2002, enclosing a copy of the post-mortem report. The prosecutor stated that, as the investigation was still continuing, no decisions had been taken yet.

28. On 8 November 2002 the military prosecutor in Elazığ decided to close the investigation. He concluded that Mr Beker had shot himself in the "right temple and at close range" because his mother had opposed his marriage to his girlfriend. He had thus been feeling unhappy. No one had helped him to commit suicide.

29. The military prosecutor's decision is largely devoted to notes reproduced from a notebook which had apparently been found among Mr Beker's personal belongings following his death. Some of the notes are confused and resemble a suicide note.

30. On 9 December 2002 the applicants lodged an objection to the military prosecutor's decision to close the investigation. They pointed out, *inter alia*, that gunpowder residue had been found on Mr Beker's right hand but the bullet entry hole had been on the left side of the head. According to the applicants, it was improbable that a person would commit suicide by shooting himself in the left side of the head with his right hand. Furthermore, they drew attention to the failure to determine the distance between the place where the pistol was found and the place where Mr Beker had fallen. They also pointed to the fact that the military prosecutor had not investigated the conflicting statements made by the officers who had witnessed the incident.

31. On 16 December 2002 a military court rejected the objection lodged by the applicants, considering that all necessary investigative steps had already been taken.

32. On 18 March 2003 the applicants wrote to the Elazığ military prosecutor's office and asked for the investigation to be reopened. In their request they repeated their above-mentioned arguments and added that they had not been consulted during the investigation. They also argued that the case file should have been sent to the Forensic Medicine Institute with a view to obtaining that Institute's opinion as to whether it would have been possible for Mr Beker to commit suicide by shooting himself in the left side

of the head with his right hand. They pointed out that the pistol used in the incident had been semi-automatic, meaning that the trigger had to be pulled for each shot and, as such, it would not have been possible for Mr Beker to shoot himself a second time after a bullet had already entered and exited his head. Nevertheless, according to the investigation, the pistol was found cocked and it was established that it had failed to fire a third time. To try to shoot himself a third time, they maintained, would have been impossible.

33. The applicants also submitted in their request that neither the pistol nor the wooden stick allegedly used to smash the padlock on T.Y.'s locker, nor the locker itself, had been examined for fingerprints to establish whether Mr Beker's fingerprints were on them.

34. They asked the military prosecutor to carry out another investigation with a view to eliminating these unresolved issues and to determine with certainty whether Mr Beker had been killed or had committed suicide as alleged. They maintained that, even assuming that Mr Beker had committed suicide, those responsible for the failure to ensure his psychological well-being should be prosecuted.

35. The applicants did not receive any information about the outcome of their application for a reopening of the investigation.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

36. The applicants complained under Article 2 of the Convention that Mustafa Beker's right to life had been violated either intentionally or due to negligence. Article 2 of the Convention reads in its relevant part as follows:

“1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. ...”

37. The Government contested that argument.

A. Admissibility

38. 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

39. The applicants submitted that the authorities had failed to take a number of crucial steps in their investigation into Mr Beker's death. As a result, suspicions surrounding the death had not been eliminated.

40. The Government were of the opinion that a detailed and effective investigation had been carried out into Mr Beker's death, which had established that Mr Beker had taken his own life.

41. In order to be able to examine the complaint, the Court must first establish whether the respondent State is under an obligation to account for Mr Beker's death. To that end the Court reiterates that, according to the Court's established case-law, States bear the burden of providing plausible explanations for injuries and deaths occurred in custody, failing which a clear issue arises under Article 3 or 2 of the Convention (see, respectively, *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V; *Salman v. Turkey* [GC], no. 21986/93, § 99, ECHR 2000-VII). The underlying reason for this is that persons in custody are in a vulnerable position and that the authorities are under a duty to protect them.

42. Since the adoption of the judgment in the case of *Akkum and Others v. Turkey*, the above-mentioned obligation has been held to cover injuries or deaths which occurred, not only in custody, but also in areas within the exclusive control of the authorities of the State because, in both situations, the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities (no. 21894/93, § 211, ECHR 2005-II (extracts); see also *Yasin Ateş v. Turkey*, no. 30949/96, § 94, 31 May 2005).

43. In the present case Mr Beker was found dead in an army barracks and all eyewitnesses to the incident were members of the armed forces. Moreover, the inquiry was conducted by military authorities and the family were not given permission to participate in the investigation. As such, only the military authorities had the means of establishing the cause of death and, if necessary, identifying and punishing those responsible for it. It follows from this that the respondent State bears the burden of providing a plausible explanation for Mr Beker's death which took place in an area under the control of its military agents.

44. In order to establish whether the Government have satisfactorily discharged that burden, the Court has had regard to the investigation carried out by the military authorities and the conclusions reached by them. When notice of the present application was given to the Government, the facts as presented by the applicants led the Court to put a number of specific questions relating to the way in which the military had conducted their inquiry which concluded that Mr Beker had committed suicide. The Court notes with regret that the replies received are incapable of dispelling the very serious misgivings it has about this investigation.

45. The Court observes at the outset that no attempt appears to have been made by the military investigator or the military prosecutor to explain the fact that the gun at issue had been fired twice, with a third attempt to fire it. Even if it is assumed that Mr Beker missed with the first shot, it follows logically from the conclusion that he killed himself that he must have been successful on the second attempt – yet according to the findings another attempt was made to fire the gun. This issue was not examined by the Military Court when it dismissed the applicants' objection to the prosecutor's decision (see paragraph 31 above). Moreover, although the Court had specifically requested the Government to address this issue in their observations, they failed to mention it.

46. The second serious and inexplicable aspect of the investigation was the military prosecutor's conclusion that Mr Beker had shot himself in the right side of the head when the post-mortem reports showed – and the Government agreed – that he had in fact been shot in the left side of the head. According to the Government, this had merely been an error of fact on the part of that prosecutor. The Government did not explain, however, why the Military Court which examined the applicants' objection against the prosecutor's decision did not deal with that "factual error". The Court is thus not convinced that this was a mere error.

47. Thirdly, the pistol which was found next to Mr Beker's body was not forensically examined for fingerprints with a view to establishing whether or not it had been handled by him. This failure is all the more important in view of the fact that the pistol was not his own but belonged to one of his colleagues (see paragraph 9 above). Similarly, the locker from which Mr Beker allegedly took that pistol was not examined for fingerprints (see paragraph 9 above).

48. Fourthly, the Court is struck by the statements made by the four expert sergeants, who were present in the room when Mr Beker allegedly killed himself and who stated that they had not seen the incident (see paragraph 13 above). The Court finds it wholly unconvincing that four trained military officials present in the same room where two shots were fired from a pistol did not see the incident or that they covered their faces in shock (see paragraph 15 above). Nevertheless, no attempt was made by the investigating authorities to press these expert sergeants with a view to discovering the truth.

49. Fifthly, with the exception of providing Mr Beker's family with a copy of the post-mortem report (see paragraph 27 above), the military authorities did not divulge any information or provide them with any documents. Nor did they allow them access to the investigation, notwithstanding the numerous attempts made by the latter and their lawyer to obtain information and documents. In the opinion of the Court, the failure of the authorities to involve the applicants in the investigation or even to provide information on it – for which failure the Government have not

offered any explanation – deprived the applicants of the opportunity to safeguard their legitimate interests. The same failure also prevented any scrutiny of the investigation by the public (see *Güleç v. Turkey*, 27 July 1998, § 82, *Reports of Judgments and Decisions* 1998-IV).

50. Similarly, when the applicants asked the military prosecutor to reopen the enquiry and investigate further a number of very serious shortcomings in the previous investigation (see paragraph 32 above), they did not even receive a response. The Government, who had been requested by the Court to clarify whether any action had been taken in relation to the applicants' reopening request submitted that "no such application [had been] made by the applicants to the Ministry of National Defence on 18 March 2003". The Court notes that the applicants never stated that they had applied to the Ministry of Defence. In any event, it is to be observed that the Government did not dispute that an application had indeed been made by the applicants on 18 March 2003 to the office of the military prosecutor, which has jurisdiction to investigate such matters. The fact that the applicants' request for the reopening of the investigation remained unanswered is particularly regrettable because the Court considers that investigating the pertinent points raised by the applicants might have enabled the authorities to establish the circumstances surrounding the death and thereby comply with their obligations under Article 2 of the Convention (see, *mutatis mutandis*, *Anık and Others v. Turkey*, no. 63758/00, § 76, 5 June 2007).

51. In view of the above, the Court considers that the investigation carried out at the domestic level was clearly inadequate and left so many obvious questions unanswered that it is unable to accept the conclusion that Mr Beker had committed suicide. To hold otherwise would mean accepting as fact either of the following two improbable scenarios:

- Mr Beker shot himself in the left side of his head using his right hand and then pulled the trigger two more times; or,
- he missed the first time, shot himself in the left side of the head with the second bullet and then pulled the trigger again, on which occasion the pistol jammed.

Moreover, by closing the investigation when they did, the authorities deprived the applicants of the opportunity to find out and be convinced as to why, how and by whose hand their close relative had died.

52. Indeed, in view of the apparent carelessness with which the investigation was conducted, the fact that the conclusion reached defies logic, the unwillingness to reopen the investigation, and the lack of satisfactory explanations (see paragraphs 45 and 46 above) proffered by the Government, the applicants could be forgiven for thinking that the investigation might be covering up a more sinister explanation, such as murder.

53. In the light of the foregoing, the Court considers that no meaningful investigation was conducted at the domestic level capable of establishing the true facts surrounding the death of Mustafa Beker. Consequently, it concludes that the Government have failed to account for this death and the State must bear the responsibility for it.

54. It follows that there has been a violation of Article 2 of the Convention in respect of Mr Beker's demise.

II. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION

55. Relying on Article 6 of the Convention, the applicants argued that the investigation into the death had not been fair and that they had been deprived of an effective remedy within the meaning of Article 13 of the Convention.

56. The Government contested that argument.

57. The Court considers that these complaints may be declared admissible. However, having regard to the violation found above, the Court deems it unnecessary to examine these complaints separately on the merits.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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

59. The first applicant Fadik Beker claimed 42,324.27 euros (EUR) in respect of pecuniary damage for the killing of her son Mustafa Beker who, she submitted, used to provide her with financial assistance. In respect of that claim Mrs Beker relied on an expert report which takes into account a number of parameters, including, in particular, the age and monthly income of Mustafa Beker at the time of his death and the statutory retirement age.

60. Fadik Beker also claimed EUR 40,000 in respect of non-pecuniary damage. Each of the remaining three applicants claimed the sum of EUR 25,000 in respect of non-pecuniary damage.

61. The Government were of the opinion that the claims for pecuniary and non-pecuniary damages were unsubstantiated and that there was no causal connection between the pecuniary damage and the alleged violations.

62. The Court's case-law has established that there must be a clear causal connection between the damages claimed by an applicant and the violation of the Convention and that this may, in appropriate cases, include compensation in respect of loss of earnings (see, among other authorities, *Barberà, Messegue and Jabardo v. Spain* (Article 50), 13 June 1994, §§ 16-20, Series A no. 285-C). The Court has found (see paragraphs 53-54 above) that the authorities were liable under Article 2 of the Convention for the death of the first applicant Mrs Beker's son. It also notes that Mrs Beker's submission that her son had been providing for her financially was not disputed by the Government. In these circumstances, a direct causal link has been established between the violation of Article 2 and the first applicant's loss of the financial support provided by her son.

63. The Court, having regard to similar cases (*Kişmir v. Turkey*, no. 27306/95, § 154, 31 May 2005; *Akdeniz v. Turkey*, no. 25165/94, § 150, 31 May 2005) and deciding on an equitable basis, awards the first applicant, Mrs Fadik Beker, the sum of EUR 16,500 in respect of pecuniary damage.

64. Furthermore, deciding on an equitable basis, the Court awards EUR 20,000 to the first applicant, Mrs Fadik Beker, and EUR 5,000 to each of the other applicants in respect of non-pecuniary damage.

B. Costs and expenses

65. The applicants claimed that their lawyers had spent approximately fifteen hours on the case and submitted to the Court a time sheet in support of that request. They also referred to the recommendation of the Elazığ Bar Association and the General Bar Association of Turkey for hourly fees and left it to the Court's discretion to decide the hourly rate. The Court notes that the General Bar Association of Turkey recommends approximately EUR 55 per hour, whereas the Elazığ Bar Association recommends approximately EUR 200 per hour for legal fees.

66. The applicants also claimed the sum of EUR 125 in respect of various stationery, postage and transport costs, and EUR 100 for the fees of an expert who drew up the report relied on by them in respect of their claim for pecuniary damage (see paragraph 59 above). The applicants submitted a bill, which is certified "paid" by this expert.

67. The Government were of the opinion that no receipts or documents were provided by the applicants in respect of their claims. They also considered that neither private contracts between lawyers and their clients, nor Bar scale fees could be relied on when making an award for legal fees. They invited the Court not to make any award in respect of costs and expenses.

68. The Court observes that, contrary to the Government's opinion, the applicants did submit to the Court a time sheet showing the hours spent by their lawyers on the case. It also observes that such time sheets have been

accepted by the Court as supporting documents in a number of cases (see, most recently, *Ayhan and Others v. Turkey*, no. 29287/02, § 31, 14 October 2008; *Osman Karademir v. Turkey*, no. 30009/03, § 69, 22 July 2008; *Karabulut v. Turkey*, no. 56015/00, § 62, 24 January 2008). Furthermore, contrary to the Government's submissions, the applicants did submit a bill in respect of the fees of the expert. Both the time sheet and the bill were forwarded to the respondent Government for comments and the Government did not challenge them.

69. 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 are reasonable as to quantum. Regard being had to the information and documents in its possession and the above criteria, the Court considers it reasonable to award the applicants jointly EUR 2,000 for their costs and expenses.

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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 2 of the Convention;
3. *Holds* that there is no need to examine separately the complaints under Articles 6 and 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Turkish liras at the rate applicable at the date of settlement:
 - (i) to the first applicant, Mrs Fadik Beker, EUR 16,500 (sixteen thousand five hundred euros) in respect of pecuniary damage and EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (ii) to each of the other three applicants, EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; and

- (iii) to the four applicants jointly, EUR 2,000 (two thousand euros) in respect of costs and expenses, plus any tax that may be chargeable to them;
- (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;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 24 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President