



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF BAYER v. GERMANY

(Application no. 8453/04)

JUDGMENT

STRASBOURG

16 July 2009

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Bayer v. Germany,

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

Peer Lorenzen, *President*,

Rait Maruste,

Karel Jungwiert,

Renate Jaeger,

Mark Villiger,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 23 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 8453/04) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a German national, Mr Detlef Bayer (“the applicant”), on 1 March 2004.

2. The applicant was represented by Mr D. Herrmann, a lawyer practising in Karlsruhe. The German Government (“the Government”) were represented by their Agent, Mrs A. Wittling-Vogel, *Ministerialdirigentin*, of the Federal Ministry of Justice.

3. On 11 February 2008 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1949 and lives in Linsengericht.

5. He joined the civil service in 1967 and was appointed a civil servant in 1969. In 1976 the applicant was appointed a bailiff and civil servant for life. In 1984 he was promoted to chief bailiff.

6. In 1985 a new supervisor (*Dienstvorgesetzte*) was appointed for him, with whom he had numerous professional disputes. The applicant

unsuccessfully challenged a great number of his supervisor's instructions in court. Despite this being pointed out to him, he continued to ignore his supervisor's guidance and to act contrary to the latter's instructions.

7. On 28 November 1986 preliminary disciplinary investigations were opened against the applicant. On 17 July 1987 a final (preliminary) report was drawn up. On 3 August 1987 the applicant was informed that the preliminary investigations had been closed. However, the preliminary investigations had to be re-started and expanded as numerous further misdemeanours possibly committed by the applicant had been discovered.

8. On 9 May 1990 the President of the Frankfurt Court of Appeal opened formal disciplinary investigations against the applicant on suspicion of a large number of misdemeanours committed from 1987 to 1990. The allegations included false recording of enforcement proceedings, imposition of excessive costs and hindering audits of his professional conduct.

9. On 3 November 1990 the applicant challenged the President of the Frankfurt Court of Appeal for bias. As no decision was reached, the applicant complained to the Hessen Ministry of Justice, which, on 28 February 1991, informed him that he had no right to lodge complaints of bias in the framework of disciplinary investigations.

10. In the meantime, the disciplinary proceedings were stayed on 29 November 1990 in accordance with Article 14 § 1 of the Hessen Disciplinary Code (see paragraph 30 below) ("the Code") with respect to the then ongoing criminal proceedings concerning the same facts. Moreover, the applicant was temporarily removed from office. His basic remuneration remained unaffected.

11. On 20 September 1991 the applicant again challenged the President of the Frankfurt Court of Appeal for bias; on 8 October 1991 the latter rejected the challenge as being unfounded, and on 7 November 1991 the Hessen Ministry of Justice, again informed the applicant that he had no right to challenge members of the investigating authority for bias.

12. On 12 December 1991 the applicant was acquitted of the criminal charges and the criminal proceedings were thus terminated.

13. On 3 May 1995 the disciplinary investigations were resumed.

14. The formal disciplinary investigations were closed and a first formal report was drawn up on 20 October 1995. However, as the hearing of further witnesses was necessary, the investigation was continued. According to a note dated 27 September 1996 the delays in the investigation were due to the complexity of the case and to the processing of priority disciplinary matters. On 5 February 1997 the final report was drawn up.

15. On 25 August 1997 the President of the Court of Appeal ordered the head of the investigation to compile the charges.

16. On 17 October 1997 the prosecutor in charge of the preparation of the charges withdrew due to overwork and illness and had to be replaced by another prosecutor.

17. On 27 September 1999 the charges were finalised. They were received by the Disciplinary Chamber of the Frankfurt Administrative Court on 12 January 2000. The applicant was accused of having hindered the audit of his professional conduct on three occasions, having falsified and then charged for disbursements and fees without any legal basis on 541 occasions and having acted against his supervisor's instructions on multiple occasions.

18. On 20 March 2000 the applicant requested that the court hear further witnesses.

19. On 6 July and 23 November 2000 oral hearings were held. On the latter date the proceedings were stayed and the charges were sent back to the investigating authority to correct errors.

20. From 19 February to 6 March 2001 eight witnesses were reheard by the investigating authority. On 21 March 2001 the applicant was scheduled to be heard but failed to attend.

21. On 1 June 2001 the revised charges of 11 May 2001 were submitted to the Administrative Court along with 48 volumes of files.

22. On 5 July 2001 the applicant repeated his request of 20 March 2000 as no decision had been taken on his request to hear further witnesses.

23. On 30 October 2001 the Frankfurt Administrative Court held an oral hearing and decided to remove the applicant from office in accordance with the provisions of the Hessen Civil Service Act and the Disciplinary Code as he had been found responsible for 519 misdemeanours between 27 November 1987 and 3 November 1990.

24. On 11 December 2001 the applicant appealed to the Kassel Administrative Court of Appeal.

25. On 1 July 2003 the Kassel Administrative Court of Appeal dismissed the applicant's appeal. It found that Article 6 of the Convention was not applicable to disciplinary proceedings and that, in contrast to criminal proceedings, unreasonable delays could not result in the discontinuation of the proceedings or in the reduction of the penalty. The court further found that there had been no reason to formally decide on the applicant's requests of 20 March 2000 and 5 July 2001 to hear witnesses as the requests were wholly unsubstantiated.

26. On 7 August 2003 the applicant lodged a constitutional complaint with the Federal Constitutional Court regarding the length of the proceedings and the interpretation and application of procedural rules and substantial provisions of disciplinary law.

27. On 10 September 2003 the Federal Constitutional Court refused to admit the applicant's constitutional complaint without giving reasons.

II. RELEVANT DOMESTIC LAW

A. The Hessen Disciplinary Code

28. Article 22 of the Code, as in force at the material time, provides that the civil servant's supervisor institutes preliminary disciplinary investigations if there is a suspicion that the civil servant has committed a disciplinary offence. The results of the preliminary investigations must be communicated to the civil servant. Formal disciplinary proceedings are instituted if the supervisor considers that there is some likelihood that a disciplinary measure may be imposed (Article 24 of the Code). The formal disciplinary proceedings are composed of disciplinary investigations and proceedings before the Administrative Court (Article 29 of the Code). If the investigating authority decides not to discontinue the proceedings, its representative compiles the charges and transfers them to the disciplinary chamber of the Administrative Court (Article 58 of the Code), which orders either a disciplinary measure, the civil servant's acquittal or the discontinuation of the proceedings (Article 68 of the Code).

29. Article 72 § 1 of the Code provides that judgments of the Administrative Court may be appealed within one month of their service on the civil servant. If the Administrative Court of Appeal considers the appeal, on points of fact and law, to be admissible and well-founded it quashes the judgment of the Administrative Court and rules on the matter itself (Article 79 of the Code) or, under certain circumstances, remits the case to the Administrative Court for fresh consideration (Article 78 § 1 No. 3 of the Code).

30. Article 14 § 1 of the Code provides that if criminal proceedings are brought against a civil servant, disciplinary proceedings instituted on account of the same facts shall be suspended until such time as the criminal proceedings have been concluded. The civil servant may apply for a judicial decision to challenge the suspension of the disciplinary proceedings and it is for the Administrative Court to make a final decision on this matter. The civil servant may lodge a complaint against the decision of the Administrative Court with the Administrative Court of Appeal (Article 14 § 4 of the Code).

31. Under Article 61 of the Code a civil servant may apply for a ruling from the Administrative Court if, within six months following service of the order opening disciplinary proceedings, the proceedings have neither been discontinued nor the charges served on the civil servant. If the president of the Administrative Court finds that an unreasonable delay has occurred, he or she imposes a deadline within which the charges must be submitted or the proceedings discontinued. If the president finds that an unreasonable delay has occurred, he or she may reject the application by way of final

decision. The president may extend the deadline for the submission of the charges or the discontinuation of the proceedings. If the charges are not submitted or the proceedings not discontinued within that deadline, the formal disciplinary proceedings shall be considered to be discontinued. At the civil servant's request, the president of the disciplinary administrative court shall give a final decision not subject to review.

32. In respect of a comparable remedy provided for by Baden-Württemberg disciplinary law, the Mannheim Administrative Court of Appeal ruled that the unreasonable length of the proceedings could not result in the discontinuation of the disciplinary proceedings against the civil servant as disciplinary law provided for an effective remedy to accelerate the proceedings (see Mannheim Administrative Court of Appeal, decision of 18 June 2003, no. DL 17 S 5/03).

THE LAW

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

33. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in 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...”

A. Admissibility

1. *The parties' submissions*

34. The Government argued that this complaint should be rejected as being incompatible *ratione materiae* since Article 6 of the Convention was not applicable to disciplinary proceedings under either its civil or criminal head. They referred in particular to the Court's case-law in *Eskelinen Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 62, ECHR 2007-...), which, they argued, suggested that Article 6 of the Convention merely applied to ordinary labour disputes such as those relating to salaries, allowances or similar entitlements. Disciplinary proceedings must be excluded from the guarantees of Article 6 § 1 as the relationship between civil servants and the state was not comparable to that between employees and their employers.

35. The Government further submitted that in any event the cumulative preconditions set out in *Eskelinen* had not been met as the “right to a court” covered only the right to institute proceedings before courts and the right to have a final, binding judicial decision. However, under German law the applicant could neither institute disciplinary proceedings against himself nor could he appeal against the institution of such proceedings. The fact that he was able to defend himself in the proceedings merely ensured a fair trial but did not prove that he had a “right to a court”.

36. The applicant argued that in its *Eskelinen* judgment the Court had not restricted the matters to disputes concerning salaries, allowances and similar claims, but rather expressly based its decision on the general presumption that Article 6 was applicable to disputes to which a civil servant was a party. Furthermore Hessen disciplinary law did not exclude access to the courts for civil servants but provided the possibility of appealing against the decisions of the Administrative Court in disciplinary proceedings and thus satisfied the *Eskelinen* test.

2. The Court's assessment

37. The Court notes that the proceedings in the present case did not involve the determination of a criminal charge against the applicant. The Court must next consider whether the civil head of Article 6 is applicable in the instant case. In this connection, the Court has held that, in principle, there can be no justification for the exclusion from the guarantees of Article 6 for ordinary labour disputes, such as those relating to salaries, allowances or similar entitlements, on the basis of the special nature of relationship between the particular civil servant and the State in question. There will, in effect, be a presumption that Article 6 applies. It will be for the respondent Government to demonstrate, first, that a civil-servant applicant does not have a right of access to a court under national law and, second, that the exclusion of the rights under Article 6 for the civil servant is justified (see *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 62, ECHR 2007-...).

38. In the present case, the proceedings concerned a disciplinary measure, namely the applicant's removal from office for having committed numerous misdemeanours. This dispute, as the Government rightly pointed out, did not concern a question relating to “salaries, allowances or similar entitlements”, which are, however, no more than non-exhaustive examples of the “ordinary labour disputes” to which Article 6 should in principle apply. The Court notes in this respect that after the President of the Frankfurt Court of Appeal had terminated the disciplinary investigations, the applicant had the right to challenge the charges brought against him before the administrative courts at two levels of jurisdiction. The German system thus secured the applicant's “right to a court” of which the right of access constitutes one aspect.

39. It follows that Article 6 is applicable under its civil head to the disciplinary proceedings in question (see also *Olujić v. Croatia*, no. 22330/05, §§ 34, 44, 5 February 2009, and *Melek Sima Yilmaz v. Turkey*, no. 37829/05, § 19, 30 September 2008).

40. Accordingly, the Government's objection in this respect must be rejected.

3. Conclusion

41. The Court also 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. Period to be taken into consideration

42. The applicant maintained that the relevant period started to run on 28 November 1986 when the preliminary disciplinary investigations were opened against him and that they thus lasted almost 17 years until the Federal Constitutional Court rendered its decision on 10 September 2003.

43. The Government did not contest that argument.

44. The Court has recognised in administrative proceedings that the relevant period may start to run even prior to the court proceedings if the preliminary administrative proceedings were a precondition of the former (see, among other authorities, *Janssen v. Germany*, no. 23959/94, § 40, 20 December 2001, and *König v. Germany*, judgment of 28 June 1978, Series A no. 27, § 98). In the instant case, only the decision to formally open the disciplinary proceedings against the applicant was directly decisive for the question whether disciplinary charges against the applicant would be brought before the administrative courts. The Court therefore considers that a dispute arose only from the moment in which the formal disciplinary investigations were opened against the applicant on 9 May 1990.

45. Consequently, in the present case, the relevant period started to run on 9 May 1990 and ended on 10 September 2003 with the decision of the Federal Constitutional Court. It thus lasted thirteen years and four months for the formal disciplinary investigations and three levels of jurisdiction.

2. The reasonableness of the length of proceedings

a) Submissions made before the Court

46. The applicant reasoned that the proceedings were unreasonably long. The issues in the case were not particularly complex. Only eight witnesses

were heard and the volume of the case files merely resulted from numerous documentary evidence (that is copies of fees imposed by the applicant for issuing copies of arrest warrants and protocols). Furthermore, he did not contribute to the length of the proceedings. Thus the remedy provided for by Article 61 § 1 of the Code (see paragraph 31 above) was not open to him during the stay of proceedings between 29 November 1990 and 21 May 1995. After that period he could not avail himself of this remedy as he had never been advised of the legal remedies available to him (*Rechtsbehelfsbelehrung*). In any event that remedy would have been unsuccessful as the Administrative Court of Appeal considered, even on 1 July 2003, that the delays in the proceedings were irrelevant. Moreover, his requests to hear evidence were all rejected and his complaints for bias were decided within a few weeks so that they did not delay the proceedings. According to the applicant, the length of the proceedings is mainly attributable to the German authorities who waited three and a half years before continuing the disciplinary proceedings after the parallel criminal proceedings had ended and then took three years to file the indictment with the Administrative Court. Finally, the applicant emphasised that the delay in the proceedings had a severe effect on his employment and financial situation.

47. The Government acknowledged that the extremely long duration of the proceedings had exceeded the “reasonable time” requirement as set out in Article 6 § 1. However, the proceedings were unusually complex as demonstrated by the voluminous case file (48 volumes) and the comprehensive judgment (47 pages). Extensive investigations were necessary to determine the large number of misdemeanours committed over a long period of time by the applicant. Furthermore the applicant contributed significantly to the length of the proceedings in that he failed to apply for a court decision to challenge the suspension of the disciplinary proceedings in accordance with Article 14 § 4 of the Code (see paragraph 30 above) and to make use of the remedy provided for by Article 61 of the Code (see paragraph 31 above) to accelerate the proceedings between 21 May 1995 and 21 January 2000. As to the alleged unlikelihood of success, it would be mere speculation as to what decision the Administrative Court might have reached if the applicant had in fact availed himself of that remedy. Furthermore the applicant delayed the proceedings by lodging two wholly unsubstantiated requests to hear two witnesses and by challenging the President of the Frankfurt Court of Appeal twice for bias.

48. As to the conduct of the courts, the Government submitted that in accordance with Article 14 of the Code (see paragraph 30 above) the Court of Appeal was obliged to suspend the disciplinary proceedings while the criminal proceedings were pending. Lastly, the Government emphasised that, irrespective of the fact that the proceedings were of great importance to

the applicant, he had continued to receive his salary during the entire proceedings.

b. The Court's assessment

49. The Court reiterates that 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).

50. The Court observes that the subject matter of the proceedings was of some complexity as it involved investigations into a large number of disciplinary offences committed over a period of three years and the hearing of several witnesses.

51. As to the conduct of the applicant, the Court notes that the applicant failed to undertake all possible steps to accelerate the proceedings. In particular, he failed to challenge the ongoing suspension of the disciplinary proceedings under Article 14 § 4 of the Code (see paragraph 30 above) and thus relinquished his right to a judicial decision on the question of whether his suspension from work was still justified after the parallel criminal proceedings were discontinued on 12 December 1991. Furthermore, the applicant failed to apply for a ruling by the court to accelerate the disciplinary proceedings as provided for by Article 61 of the Code which would have enabled the Administrative Court to impose a time-limit for the submission of the charges or the discontinuation of the proceedings if it considered that the proceedings had been unreasonably long (see paragraph 31 above). In so far as the applicant alleged that such an application would have been dismissed, the Court considers that even where there are doubts as to a domestic remedy's chances of success, that remedy must be tried (see, *mutatis mutandis*, *Kaja v. Greece*, no. 32927/03, § 54, 27 July 2006). The Court also notes that, apart from his failure to use the aforementioned remedies, the applicant did not contribute otherwise to the length of the proceedings.

52. As to the conduct of the domestic authorities, the Court observes at the outset that the applicant's case was processed rather expeditiously by the administrative courts and by the Federal Constitutional Court.

53. With regard to the disciplinary investigations before the Frankfurt Court of Appeal, the Court notes that they lasted some nine years and eight months. In this connection the Court observes that the Government did not submit any plausible reason for the suspension of the disciplinary proceedings until 3 May 1995 although the parallel criminal proceedings had already ended on 12 December 1991. Furthermore, the President of the Court of Appeal ordered the compilation of the applicant's charges on 25 August 1997, that is more than six months after the final report had been

drawn up on 5 February 1997. The Court accepts that a delay in the preparation of the charges was caused by the ill-health of the prosecutor who had to withdraw on 17 October 1997. However, it considers that the period of almost two years between this *force majeure* circumstance and the finalisation of the charges was too long. Lastly, a period of three months elapsed between the finalisation of the charges and their receipt by the Administrative Court and a delay of six months was caused by the remittal of the charges to the Frankfurt Court of Appeal for the correction of mistakes.

54. Having examined all the material submitted to it, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

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

II. OTHER ALLEGED VIOLATIONS

55. The applicant complained under Articles 1, 3, 6, 7 and 14 of the Convention and Article 1 of Protocol No. 1 about the interpretation of the law and the partial loss of his remuneration and pension.

56. The Court has examined the remainder of the applicant's complaints as submitted by him. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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

58. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage pointing to the distress and frustration he had suffered from the length of the proceedings.

59. He further claimed EUR 475,338.37 in respect of pecuniary damage accruing until December 2008, arguing that proceedings of a reasonable length would have given him a chance to seek another position as a bailiff in

a different region (*Land*) in the early 1990s. Given the need for bailiffs in the newly-created regions (*Länder*) during that period he argued that he would have found a new position as court bailiff with relative ease. Therefore the following pecuniary damages were directly linked to the length of the proceedings: loss of fees granted for fulfilling his responsibilities (EUR 164,818.89), loss of reimbursement of clerical expenses (EUR 61,077.06), loss of reimbursement of travel expenses (EUR 138,002.58), loss of lump sums for printing official forms (EUR 15,209.53), damages resulting from the loss of promotion to a higher position (EUR 19,837.62), loss of his official supplement (*Amtszulage*) (EUR 24,818.94), and loss of remuneration as of August 2003 (EUR 51,573.75). In addition, he claimed compensation for all future pecuniary damage, resulting from the fact that he would no longer be able to find a job and would thus be without income. He alleged that this had also been caused by the length of the proceedings.

60. The Government contested the claims for damages, arguing that the applicant's submissions regarding the possibility of having found a new position as bailiff were mere hypothesis. In particular, and given his suspension from office on account of the disciplinary proceedings, the chances of his re-employment in the public service were slim. As to the claims in respect of non-pecuniary damage, the Government maintained that they would be adequately compensated by the finding of a violation given the applicant's conduct and the fact that he received his full salary throughout the proceedings.

61. As regards the applicant's claims for pecuniary damages, the Court notes that they are based on the assumption that the applicant would have found a job as bailiff despite his suspension from office. In this connection the Court reiterates that it cannot speculate as to what the outcome of the proceedings would have been had they satisfied the requirements of Article 6 § 1 as to their length (see, among many other authorities, *Sürmeli*, cited above, § 144). It finds in particular that it is not in a position to speculate as to how the applicant's professional life would have developed if the domestic courts had processed the disciplinary proceedings within a reasonable period of time (see, in this connection, *Herbst v. Germany*, no. 20027/02, § 89, 11 January 2007). Accordingly, it considers that no award can be made to the applicant under this head.

62. In respect of non-pecuniary damages, the Court considers that the finding of a violation would not constitute sufficient just satisfaction for the distress and frustration sustained by the applicant. However, it considers that the sum claimed is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 3,500 under this head.

B. Costs and expenses

63. The applicant claimed EUR 6,542.18 for representation costs incurred before the Court (hourly fee of EUR 200 for some 27 hours of legal work plus expenses and VAT) and EUR 3,048.66 for translation costs. The applicant submitted a copy of the legal fees' agreement made with his lawyer and invoices for all costs incurred.

64. The Government did not express an opinion on the matter.

65. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,000 for the expenses incurred before the Court and dismisses the remainder of the claim under this head.

C. Default interest

66. 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 excessive length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage
 - (ii) EUR 3,000 (three thousand euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable to him on the above amounts;

(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;

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

Done in English, and notified in writing on 16 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President