



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

FIFTH SECTION

CASE OF WILDGRUBER v. GERMANY

(Applications no. 42402/05 and no. 42423/05)

JUDGMENT

STRASBOURG

21 January 2010

FINAL

21/04/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Wildgruber v. Germany,

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

Peer Lorenzen, *President*,
Renate Jaeger,
Karel Jungwiert,
Rait Maruste,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 15 December 2009,

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

PROCEDURE

1. The case originated in two applications (nos. 42402/05 and 42423/05) 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 Erwin Wildgruber (“the applicant”), on 7 and 8 November 2005 respectively.

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

3. On 29 January 2008 the Court decided to join the applications, declared the applications partly inadmissible and decided to communicate the complaints concerning the length of the custody proceedings and the lack of remedies in that respect to the Government. It also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1935 and lives in Harmstorf, Germany.

5. The applicant and Mrs W-L (born in 1965) married in May 1994. Their son P. was born on 30 November 1994. The applicant also adopted

Mrs W-L's son J. M., who had been born on 19 April 1991. Since the spouses' separation in May 1997 both children have lived with Mrs W-L. The applicant then entered into a relationship with another woman, Ms N. They had a daughter (A.) born in 1998.

1. Proceedings before the Winsen (Luhe) District Court

a. The first phase of the proceedings (Judge R.)

6. On 13 January 1998 the applicant filed a divorce petition with the Winsen (Luhe) District Court. By submissions dated 15 January 1998 he requested sole custody of the two children J. M. and P. On 27 February 1998 his wife, Mrs W-L, requested sole custody of their children.

7. In March and April 1998 the District Court (Judge R.) requested the parties and their insurers to submit all information necessary for the adjustment of the parties' pension rights (*Versorgungsausgleich*). The information requested reached the court by July 1998.

8. On 14 September 1998 the Harburg Youth Office submitted a report. It argued that in view of their continual quarrels Mrs W-L and the applicant were unable to exercise custody of their children jointly.

9. On 18 September 1998 the District Court held a hearing. The parties subsequently submitted their observations concerning Mrs W-L's claim for maintenance, which she had lodged only at the hearing.

10. In two notes for the records dated 14 January and 16 March 1999 the District Court judge stated that in view of his increased caseload, he could not currently take the present proceedings further.

11. On 7 April 1999 the Harburg Youth Office confirmed that it was impossible for the parties to agree on issues concerning their children and urged the court to decide speedily.

12. On 17 May 1999 and on 21 June 1999 the Winsen (Luhe) District Court refused requests made by the applicant, *inter alia*, on 1 June 1999 by reference to Article 623 § 2 of the Code of Civil Procedure (see paragraph 48 below) to separate the divorce proceedings from the proceedings concerning ancillary matters (*Folgesachen*), in particular custody and maintenance, in order to decide on his divorce beforehand. It found that the legal requirements to do so laid down in Article 628 of the Code of Civil Procedure (see paragraph 49 below) had not been met. There had not been an extraordinary delay in the divorce proceedings. This was, as a rule, only the case when proceedings had been pending for more than two years. Moreover, the applicant was not suffering undue hardship as a result of the fact that the decision on the divorce and on all ancillary matters would be given at the same time.

13. On 28 June 1999 the applicant refused to return the children to their mother following the exercise of his right of contact and absconded with them.

14. By an interim order of 20 July 1999 the District Court, having held a hearing in the presence of the parties on 16 July 1999 concerning the applicant's divorce petition and all ancillary matters, awarded Mrs W-L sole custody of J. M. and P. and ordered the applicant to return the children immediately to her. The applicant had been asked by the court to bring the children along to the hearing, but had not done so.

15. On 27 August 1999 the court cancelled the hearing scheduled for that day to pronounce its judgment and fixed another hearing instead, arguing that in view of recent events both children would have to be heard again on the question of custody.

16. On 5 October 1999 the applicant lodged a disciplinary complaint and a motion for bias against District Court Judge R., arguing that he had delayed the proceedings and had proved to be biased in the hearing on 16 July 1999 as he had reprimanded him for not returning the children to their mother.

17. On 4 November 1999 the Celle Court of Appeal allowed the applicant's complaint of bias, referring to Judge R.'s submissions dated 13 October 1999. The latter had stated that following the applicant's unfounded accusations, he had no longer felt able to conduct the proceedings in an impartial manner. By a decision of the same day and following an exchange of observations between the parties, the court also dismissed the applicant's appeal against the District Court's decision awarding sole custody to Mrs W-L by way of an interim injunction and the order that he return the children.

18. The applicant returned the children to their mother on 11 November 1999.

b. The second phase of the proceedings (Judge D.)

19. By submissions dated 6 December 1999 the applicant requested the court to expedite the proceedings.

20. On 22 March 2000 District Court Judge D., who had been assigned the case, held a hearing (fixed on 7 February 2000) on a request by the applicant for rectification of the record of the hearing on 16 July 1999. He decided on 19 April 2000 that only Judge R. had authority to change the minutes.

21. On 11 May 2000 the applicant requested the court, *inter alia*, to separate the divorce proceedings from the proceedings concerning the ancillary matters. He later withdrew his request to separate the proceedings.

22. On 16 October 2000 the District Court, having held a further hearing on the question whether the minutes of the hearing of 16 July 1999 should be rectified, decided that it did not have jurisdiction to do so.

23. On 28 December 2000 the District Court ordered the applicant to submit additional information on his income. The applicant sent the requested documents to the court on 22 February 2001.

24. On 5 April 2001 the applicant requested the District Court also to apportion the increase in the spouses' assets during their marriage (*Zugewinnausgleich*) in the course of the divorce proceedings.

25. On 3 May 2001 the applicant lodged a complaint of failure to act (*Untätigkeitsbeschwerde*) with the Celle Court of Appeal, which was followed up by additional reasons on 16 May 2001.

26. On 12 July 2001 the Celle Court of Appeal dismissed the applicant's complaint of failure to act as inadmissible, as no appeal lay to it. An extraordinary appeal might lie in cases in which a court failed to expedite the proceedings in a manner which amounted to a denial of justice. The court conceded that the divorce proceedings had been dealt with slowly since December 1999 and have only been expedited by the District Court's decision of 28 December 2000. However, it was no longer necessary to decide whether proceeding in this manner amounted to total inactivity. The District Court had fixed a date for a hearing on 15 August 2001 in the meantime and the applicant had withdrawn his request to separate the divorce proceedings from the proceedings on the ancillary matters. The requirements for a complaint of failure to act were thus no longer met.

27. On 15 August 2001 the District Court held a hearing on the applicant's claim for apportionment of the increase in the spouses' assets during their marriage and his renewed request to separate the divorce proceedings from the ancillary matters.

28. On 7 September 2001 the District Court delivered a partial judgment on the applicant's request for apportionment of the increase in the spouses' assets during their marriage, in which it ordered Mrs W-L to inform the applicant of what assets she owned in February 1998.

29. On 23 October 2001 the District Court refused the applicant's request of 9 August 2001, which he had based both on Article 628 and on Article 623 § 2 of the Code of Civil Procedure, to separate the divorce proceedings from the ancillary matters. The applicant had argued that he wanted to obtain his divorce beforehand in order to be able to remarry and to provide financial security for his new family. The court, relying on Article 628 of the Code of Civil Procedure, found that the refusal to separate the proceedings had delayed the decision on the divorce petition. This did not, however, cause undue hardship to the applicant, as he had caused the delays. By lodging an unfounded criminal and disciplinary complaint against Judge R. he had caused the latter to consider himself biased. Following the change of judges, he had pursued his unfounded requests for rectification of the record. He had then applied for apportionment of the increase in the spouses' assets during the marriage, which had further prolonged the proceedings for an unspecified period of time.

30. By submissions dated 26 October 2001 the applicant lodged an appeal against the partial judgment of 7 September 2001, which he withdrew on 27 November 2001.

31. On 11 January 2002 the Celle Court of Appeal dismissed as inadmissible an extraordinary appeal by the applicant (*außerordentliche Beschwerde*) lodged on 16 December 2001 against the District Court's decision dated 23 October 2001, as no appeal lay against the District Court's decision. Even assuming that such an appeal lay against the decision, it would be ill-founded.

c. The third phase of the proceedings (Judges Ro. and E.)

32. Between April and June 2002 the case was assigned to Judge Ro., who noted in April 2002 that due to the court's backlog, he was not currently in a position to further the proceedings. From July 2002 onwards the case was assigned to Judge E.

33. On 27 October 2002 the applicant lodged another complaint with the Celle Court of Appeal that the District Court had failed to act. The Celle Court of Appeal subsequently declared the applicant's complaint to be without object as the District Court had fixed a date for a hearing in the meantime.

34. On 12 December 2002 District Court Judge E. informed the applicant that, in view of the court's backlog, delays in dealing with the voluminous file were inevitable.

35. On 2 January 2003 the applicant amended his action; Mrs W-L subsequently replied in writing.

36. On 20 March 2003 the District Court heard J. M.

37. On 18 and 23 April and 26 May 2003 the applicant made submissions concerning the custody of the two children.

38. On 30 April 2003 the District Court held a further hearing on the divorce petition, custody, and the apportionment of the increase in the spouses' assets during their marriage, as well as maintenance.

39. On 15 May 2003 the District Court heard P.

40. By judgment of 8 July 2003, the Winsen (Luhe) District Court granted the parties' divorce and awarded Mrs W-L sole custody of J. M. and P. This guaranteed them continuity and was in their best interests, given that the children had been living with their mother for the past six years and had built up a stable social environment at their present place of residence. The District Court further decided on the adjustment of the divorced couple's pension rights and on the maintenance the applicant was to pay Mrs W-L and their two children and fixed the amount of money Mrs W-L was to pay the applicant to apportion the increase in the spouses' assets during their marriage.

2. Proceedings before the Celle Court of Appeal

41. On 11 August 2003 the applicant appealed against the District Court's judgment as regards custody, maintenance and the adjustment of the divorced couple's pension rights. He submitted detailed reasons for his appeal on 17 October 2003.

42. By a decision of 27 January 2004 the Celle Court of Appeal, having held a hearing on 13 January 2004, dismissed the applicant's appeal against the District Court's judgment. Endorsing the reasons given by the District Court, it found, in particular, that awarding sole custody of J. M. and P. to Mrs W-L was in the children's best interest.

3. Proceedings before the Federal Constitutional Court

43. On 1 March 2004 the applicant lodged a complaint with the Federal Constitutional Court against the judgment of the Winsen (Luhe) District Court dated 8 July 2003 and the decision of the Celle Court of Appeal dated 27 January 2004.

44. On 21 April 2005 the Federal Constitutional Court declined to consider the applicant's constitutional complaint (file no. 1 BvR 510/04). It found, in particular, that the applicant's complaint about the length of the proceedings was inadmissible. Given that the proceedings before the family courts had been terminated, the applicant no longer had a legal interest in a decision by the Constitutional Court.

45. The decision was served on the applicant's counsel on 9 May 2005.

II. RELEVANT DOMESTIC LAW

46. Article 622 et seq. of the Code of Civil Procedure lay down procedural rules for divorce proceedings and ancillary matters.

47. In so far as, in the case of divorce, a decision has to be taken on maintenance payments, the adjustment of pension rights or the apportionment of the increase in the spouses' assets during their marriage, and one of the spouses requests a decision on these issues in due time, the court has to try these issues together with and at the same time as the divorce petition (ancillary matters). If the divorce is granted, the court will decide on the ancillary matters simultaneously (Article 623 § 1 of the Code of Civil Procedure).

48. Moreover, a spouse's request to be granted sole custody of a child is an ancillary matter if lodged in due time. However, the court can separate this matter from the divorce proceedings at the request of one of the spouses (Article 623 § 2 of the Code of Civil Procedure).

49. Under Article 628 of the Code of Civil Procedure, the court may grant a divorce prior to its decision on ancillary matters, in particular if, as a result of its duty to decide on ancillary matters at the same time, the

decision on the divorce petition would be postponed to the extent that the delay, regard being had also to the importance of the ancillary matters, would cause undue hardship.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

50. In the applicant's submission, the duration of the custody proceedings, which had lasted for approximately seven years and four months, had been excessive and had resulted in custody of his sons being awarded to Mrs W-L for reasons of continuity. He relied on Articles 6 and 8 of the Convention.

51. The Court finds that the complaint falls to be examined under Article 6 § 1 alone which, in so far as relevant, reads:

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

A. Admissibility

52. 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*

53. The applicant argued that compared to other custody proceedings, the proceedings at issue had not been very complex. The District Court had considerably delayed the proceedings for a total of approximately 27½ months, *inter alia* by unlawfully rejecting his requests of 1 June 1999 and of 9 August 2001 under Article 623 § 2 of the Code of Civil Procedure to separate the divorce proceedings from the ancillary matters, to grant the divorce and also to decide on custody more speedily. Judge D. had only dealt with procedural matters in 2000 instead of dealing with the case on the merits. The subsequent changes in the judge to whom the case was assigned had again delayed the proceedings.

54. The applicant further submitted that he had not himself delayed the proceedings. As to his failure to bring the children along with him to the court hearing on 16 July 1999 he submitted that he had been unaware that he was obliged to do so. Moreover, he had had the right to lodge justified requests and appeals in the proceedings. When he had lodged his request to apportion the increase in the spouses' assets during their marriage in the course of the divorce proceedings on 5 April 2001, the proceedings should have been terminated a long time before.

55. The Government accepted that the custody proceedings had lasted quite a long time. They submitted that the proceedings had been particularly complex as the parties had accused each other of serious misconduct. There had been certain delays in the proceedings, notably between November 1998 and May 1999 due to the District Court's heavy workload and between 7 February and 27 December 2000 as the District Court had not examined the merits of the parties' claims in addition to the applicant's request for rectification of the record of a prior hearing. Moreover, the proceedings had not always been furthered between April 2002 and February 2003. However, the District Court had already taken an interim decision on custody on 20 July 1999 which had later been confirmed in the main proceedings.

56. The Government argued that the applicant had considerably delayed the proceedings, and not only by lodging numerous requests, submissions and unfounded appeals. He had abducted the children in 1999, thereby frustrating the District Court's intention to hear them in person on 16 July 1999, and had provoked Judge R. to declare himself biased by making manifestly unfounded accusations against him. Moreover, he had lodged a request also to apportion the increase in the spouses' assets during their marriage in the course of the divorce proceedings only on 5 April 2001, which delayed the decision, to be taken simultaneously, on custody. He further failed to lodge a request under Article 623 § 2 of the Code of Civil Procedure to separate the custody proceedings from the remainder of the proceedings. Even though he had invoked that Article on some occasions before the District Court, his requests had only been aimed at accelerating his divorce and not at obtaining a decision on custody more speedily.

2. The Court's assessment

57. 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). In cases relating to civil status, what is at stake for the applicant is also a relevant

consideration, and special diligence is required in view of the possible consequences which the excessive length of proceedings may have, notably on enjoyment of the right to respect for family life (*Laino v. Italy* [GC], no. 33158/96, § 18, ECHR 1999-I).

58. The Court considers that the period to be taken into consideration began on 15 January 1998, when the applicant requested custody of J.M. and P., and ended on 9 May 2005, when the decision of the Federal Constitutional Court was served on the applicant's counsel. It thus lasted more than seven years and three months for three levels of jurisdiction.

59. The Court considers that the custody proceedings were of some complexity due to the parties' animosity and the resulting considerable number of submissions lodged. However, what rendered the proceedings difficult for the domestic courts and delayed the decision on custody was notably the fact that, as prescribed by Articles 622 et seq. of the Code of Civil Procedure (see paragraphs 46-47 above), the domestic courts took their decision on custody at the same time as their decision on the parties' divorce and on all other ancillary matters.

60. As to the applicant's conduct, the Court considers that he contributed to the delays in the custody proceedings to a certain extent, in particular by absconding with J.M. and P. and by refusing to comply with the District Court's request to bring them along to the hearing in July 1999. Moreover, by lodging his request to apportion the increase in the spouses' assets during their marriage only at an advanced stage of the proceedings, he delayed the District Court's decision on custody, which the latter had decided to take at the same time as that on divorce and all other ancillary matters. The fact that the applicant lodged an appeal against the District Court's partial judgment which he subsequently withdrew also prolonged the proceedings. Furthermore, having regard to the applicant's submissions to the District Court of 1 June 1999 and of 9 August 2001 (see paragraphs 12 and 29 above), the Court is satisfied that the applicant lodged a request by reference to Article 623 § 2 of the Code of Civil Procedure. He had thus put the District Court in a position to separate the custody proceedings from the remainder of the proceedings. However, it was clear from the wording of his requests and their reasoning that the applicant intended to accelerate his divorce and a separate decision on custody only would probably not have served this aim.

61. As to the conduct of the domestic courts, the Court observes that, whereas the custody proceedings were conducted with due diligence by the Court of Appeal and the Federal Constitutional Court, they were pending before the District Court for more than five years and five months. As the Government essentially admitted themselves, the proceedings had been delayed at first instance following the hearing in September 1998 until May 1999 and had not been examined on the merits between November 1999 and December 2000. Furthermore, the proceedings had not

been furthered between January 2002 and March 2003 following two changes in the judge to whom the case was assigned. Moreover, as indicated above, the decision on custody alone was delayed due to the fact that the District Court, as provided by the Code of Civil Procedure, took a decision on the divorce and all ancillary matters simultaneously. The Court reiterates in this connection that Article 6 § 1 imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time (see, among many other authorities, *Sußmann v. Germany*, 16 September 1996, § 55, *Reports of Judgments and Decisions* 1996-IV; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 183, ECHR 2006-V; and *Cocchiarella v. Italy* [GC], no. 64886/01, § 74, ECHR 2006-V). The Court accepts that it may, as a rule, be in the interest of the proper administration of justice to decide on all matters linked to the divorce of a couple simultaneously. Nevertheless, it finds that special diligence was required because of the decision on custody (compare, *inter alia*, *Nuutinen v. Finland*, no. 32842/96, § 110, ECHR 2000-VIII, and *Niederböster v. Germany*, no. 39547/98, § 39, ECHR 2003-IV (extracts)) as excessive duration of custody proceedings may lead to a *de facto* decision on custody for reasons of continuity. In view of the foregoing, the length of the custody proceedings failed to meet the “reasonable time” requirement.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

63. The applicant further complained that he had not had an effective remedy in domestic law to complain about the unreasonable duration of the custody proceedings. He relied on Article 13 of the Convention in this respect, which provides:

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

A. Admissibility

64. The Court notes that this complaint, which is linked to the one examined above, 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 likewise be declared admissible.

B. Merits

65. The applicant referred to the Court's findings in the case of *Sürmeli v. Germany* ([GC], no. 75529/01, ECHR 2006-VII) to the effect that there was no effective remedy in the German legal system to complain about the length of civil proceedings. Germany had to date failed to execute that judgment by introducing an effective preventive or compensatory remedy. In particular, he had not been able to obtain redress before the Court of Appeal or the Federal Constitutional Court.

66. The Government conceded that an effective domestic remedy to complain about the duration of civil proceedings had not yet been created. Germany was still called upon to execute the Court's judgment in the case of *Sürmeli* (cited above) of 8 June 2006 in this respect. However, there was still a need for consultation between the Federal Government and Parliament on the manner in which such a remedy should work. As confirmed by Chancellor Angela Merkel on her visit to the Court in April 2008, the authorities' work on creation of such a remedy was being pursued intensively.

67. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudla v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). In respect of German law it found that there was no effective remedy providing adequate redress for the excessive duration of pending civil proceedings (see *Sürmeli*, cited above, §§ 103 et seq.) and of terminated civil proceedings (see *Herbst v. Germany*, no. 20027/02, §§ 63 et seq., 11 January 2007).

68. The Court, having regard to the parties' submissions and to its above case-law, concludes that the applicant had not had at his disposal an effective remedy in German law to deal with his arguable complaint under Article 6 about the unreasonable duration of the custody proceedings. It takes note of the Government's submissions concerning the legislative procedure to introduce an appropriate remedy in order to execute the Court's previous judgments. This procedure has now been under way for quite a considerable time. The Court again (see *Sürmeli*, cited above, §§ 136-139, and *Bähnke v. Germany*, no. 10732/05, § 45, 9 October 2008) encourages the respondent State to speedily enact a law introducing an effective remedy capable of affording adequate redress for the unreasonable length of civil proceedings in order to comply with its obligation under Article 46 of the Convention.

69. Accordingly, there has been a violation of Article 13.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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

71. The applicant claimed at least 25,000 euros (EUR) in respect of non-pecuniary damage. He argued that the duration of the custody proceedings, during which he had been uncertain about their outcome and which had to be treated with particular diligence, and the fact that he had not had any remedy to accelerate these proceedings, had caused him considerable distress. Moreover, Germany had failed to comply with its obligation under Article 1 of the Convention to implement the Court’s findings in the case of *Kudła* (cited above) in due time. Therefore, the sum awarded should be higher than usually for reasons of general prevention.

72. The Government did not comment on the applicant’s claim.

73. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 4,500 under that head, plus any tax that may be chargeable.

B. Costs and expenses

74. The applicant, who submitted documentary evidence, also claimed EUR 2,861.18 (including VAT) for counsel’s fees and expenses incurred before the domestic courts in the proceedings for failure to act brought in May 2001 before the Celle Court of Appeal and in the proceedings before the Federal Constitutional Court. He further claimed EUR 3,365.56 (including VAT) for costs incurred before the Court concerning his complaints under Article 6 and Article 13. These included EUR 3,118.22 (including VAT) for counsel’s fees and expenses and EUR 247.34 for copy and mailing costs incurred by the applicant in person.

75. The Government did not make any observations on that point.

76. 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. 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 5,000 covering costs and expenses under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

77. 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 remainder of the applications admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *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,
 - (i) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President