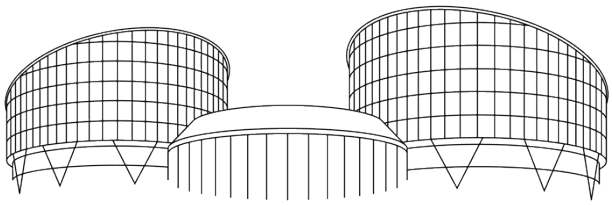

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF TKACHEVY v. RUSSIA

(Application no. 35430/05)

JUDGMENT

STRASBOURG

14 February 2012

FINAL

14/05/2012

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

In the case of Tkachevy v. Russia**,**

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 24 January 2012,

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

PROCEDURE

1. The case originated in an application (no. 35430/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Russian nationals, Mr Viktor Nikolayevich Tkachev and Mrs Elvira Eduardovna Tkacheva ("the applicants"), on 15 June 2005.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 18 May 2010 the President of the First 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 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants, spouses, were born in 1957 and 1966 respectively and live in Moscow.

5. At the time of the events they owned a flat at 9/12–1 Znamenka Street in Moscow, in the neighbourhood of the Moscow State Art Gallery of the People's Artist of the USSR Alexander Shilov. The flat had six rooms and

measured 121.8 m². It was occupied by the applicants, their two minor children, and a mother-in-law.

A. The expansion of the gallery and eviction

6. In April 2001 the Moscow Government decided that for the purpose of the gallery's reconstruction the applicants' building was to be vacated and converted into non-residential premises (Decree 373-PP). The development and resettlement of the residents were to be financed by Tverskaya Finance B.V., a private Dutch company. Upon the project's completion, 60% of the building was to go to Tverskaya Finance, and 40% to the Moscow Government. Insofar as relevant, Decree 373-PP read as follows:

> "For the purpose of an all-inclusive reconstruction of the territory adjacent to the [Gallery] and in accordance with the developed architectural planning concept, the Government of Moscow decrees:
>
> 1. To accept the proposal of the Moscow Committee of Architecture to include ... the building located at 9/12–1 Znamenka into the single investment project of building and reconstruction works at Znamenka.
>
> 2. To take into account the agreement of the investor – Tverskaya Finance B.V. – to finance the building and reconstruction of the buildings.
>
> ...
>
> 4. To adopt an agreement that after the reconstruction would divide the non-residential premises at 9/12–1 Znamenka as follows: 60% to Tverskaya Finance B.V., 40% to the Department of State and Municipal Property of Moscow.
>
> 5. To take into account the investor's agreement to finance the resettlement of tenants and owners from 9/12–1 Znamenka ... to own or acquired premises.
>
> ...
>
> 6.2. To complete the building and reconstruction works in the first quarter of 2006.
>
> ...
>
> 8. That the Prefect of the Central Administrative District together with the Department of Municipal Housing and Housing Policy of the Moscow Government should formalise the conversion of 9/12–1 Znamenka into non-residential premises."

7. The applicants opposed this project and in May 2003 they challenged Decree 373-PP in a court.

8. In August 2003 the authorities requested the State Enterprise Moszhilniiproekt, a public surveying agency, to deliver a report on the building's technical condition. The request was phrased to be "in execution

of the assignment by the First Deputy of the prefect of the Central Administrative Circuit of Moscow on the subject of finding [the building] a dangerous structure". Moszhilniiproekt found that the building was under the threat of collapse.

9. In November 2003–February 2004 the Moscow Government offered the applicants to choose a replacement flat from a four-room flat of 149 m² at 77 Udaltsova Street, a four-room flat of 105 m² at 12 Tverskaya Street, a five-room flat of 125 m² at 9/6 Zamorenova Street, and a five-room flat of 112 m² at 39/6 Dolgorukovskaya Street. The applicants rejected these offers.

10. In April 2004 the Moscow Government classified the building as a dangerous structure and ordered its conversion into non-residential premises (Decree 669-RP). Insofar as relevant, Decree 669-RP read as follows:

> "[It is hereby ordered]:
>
> 1. To classify the residential building located at 9/12–1 Znamenka as a dangerous structure and subsequently rebuild it into non-living premises.
>
> 2. To take into account that
>
> 2.1. In accordance with [Decree 373-PP] the investor is Tverskaya Finance B.V.
>
> 2.2. Tverskaya Finance B.V. is the beneficiary of a lease ... of the land plot for the reconstruction and building of the complex of the buildings including 9/12–1 Znamenka.
>
> 3. To establish that the residents of the dangerous building are to be resettled to residential premises acquired at the investor's expense.
>
> ...
>
> 7. That the Prefect of the Central Administrative District shall
>
> 7.1. Together with the Department of Housing Policy and Housing Stock of Moscow resettle the residents from the dangerous building at the investor's expense and to the premises acquired by the investor in 2004.
>
> ...
>
> 7.4. Charge the transportation costs related to the resettlement to the investor."

11. In October 2004 the applicants requested NPTs Rekonstruktsia, a private surveying agency, to deliver an alternative report on the building's technical condition. Rekonstruktsia found that the building was safe and could be repaired without resettling the residents.

12. On 1 October 2004 the Tverskoy District Court of Moscow found Decree 373-PP lawful because, among other things, the building had been classified dangerous. The court wrote:

"The [applicants] affirm that the Decree transfers their property to Tverskaya Finance B.V. But this affirmation is wrong because the Decree merely grants to the investor the right to finance the building works, reconstruction, and restoration of the buildings, and to subsequently acquire a part in those buildings.

...

There is no merit either in [the applicants'] argument that their building belongs to the cultural heritage, is a monument of history and culture, and hence cannot be reconstructed.... [The applicants] have provided no evidence that 9/12–1 Znamenka is in the State Register of cultural heritage and monuments.

[The applicants] consider that their building is not dangerous and can be lived in. This argument is belied by the survey report of August 2003 by Moszhilniiproekt ... and by [Decree 669-RP].

[The applicants] consider that there had been no legal grounds for the conversion of their building into non-living premises. But it has been shown that the residence at 9/12–1 Znamenka has been found dangerous and unfit for permanent living. It is for this reason that the building has been converted into non-living premises....

[The applicants] also claim that [Decree 373-PP] violates their housing rights and deprives them of the flat they own. This claim is hollow. It is belied by the contents of the case file and, in the first place, by the Decree itself, because it contains no clause on dispossession."

On 12 January 2005 the Moscow City Court upheld that judgment.

13. Tverskaya Finance bought a flat at 26 Krasnoprudnaya Street and offered it to the applicants as replacement. The flat had six rooms and measured 131.1 m². The applicants rejected this offer, mainly because they did not wish to change the neighbourhood and because the new flat was, in their view, of a worse quality. In August–December 2004 Tverskaya Finance and the Moscow Government asked a court to evict the applicants.

14. On 26 January 2005 the Khamovnicheskiy District Court of Moscow evicted the applicants. The court found, among other things, that after the reconstruction the building would be used as non-residential premises, and that the replacement flat was larger and dearer. Despite the applicants' objection, the court relied on a valuation report commissioned by Tverskaya Finance that evaluated Znamenka at RUB 7,556,856 and Krasnoprudnaya at RUB 10,311,148. The court wrote:

"As the flat is [the applicants'] only residence, the replacement flat should be of equal quality. The court considers that a replacement flat ... is of equal quality if ... it is located within the borders of the same town and is of the same size or larger.

The court considers that the flat to which the plaintiffs are asking to resettle [the applicants] meets these criteria fully. It is located within Moscow's administrative border, and even in the same district where [the applicants'] family lives now. The flat meets sanitary and technical requirements, is fit for living, and has all comforts. Its size and price exceed the [applicants'] current flat.

The court considers therefore that the [applicants'] resettlement to Krasnoprudnaya not only respects their rights and freedoms but also improves their living conditions.

...

The fact that 9/12–1 Znamenka is destined to be rebuilt and not demolished cannot [prevent the eviction], because ... in future the building will be used for non-living purposes.

The court ignores the [applicants'] argument that the resettlement will infringe the housing rights and interests of their children who go to a nearby school and will be unable to commute on the metro. At Krasnoprudnaya there are also secondary schools that the [applicants'] daughter will be able to attend. As to the son's having to commute on the metro, the evidence submitted shows no medical contra-indications to it."

On 18 April 2005 the Moscow City Court upheld that judgment.

15. In June 2005 the applicants moved to 26 Krasnoprudnaya Street.

16. In March 2008 the Moscow Government granted the whole of the Znamenka building to Tverskaya Finance (Decree 221-PP). Insofar as relevant, Decree 221-PP read as follows:

"For the purpose of the completion of the implementation of the investment building project, reconstruction and restoration of the buildings located at 9/12 Znamenka ... it is hereby ordered:

1. To extend for Tverskaya Finance B.V. the term of the building works, reconstruction and restoration of the buildings ... for not more than 18 months ... without penalties.

2. To take into account the pledge of Tverskaya Finance B.V. to

...

2.4. Carry out emergency works and full restoration and adaptation of 9/12–1 Znamenka.

3. To take into account the fact that

...

3.3. In the course of the implementation of the investment project the investor has resettled the residents ... from 9/12–1 Znamenka.... Tverskaya Finance B.V. has received property rights to 1,324.1 m² of premises at 9/12–1 Znamenka, including 764 m² of residential premises and 560.1 m² of non-residential premises....

...

6. To take into account the parties' agreement to the following changes in the distribution of the property upon the project's completion:

...

6.2. As regards the second part of the project the contractual distribution of property between the parties shall be as follows:

– 100% of 9/12–1 Znamenka ... shall be transferred to the investor's property."

17. According to the applicants, the building has been rebuilt into a premium residential property. According to the Government, the construction is still underway, and the building will house commercial and administrative premises.

18. The Government based this statement on information available from the website located at http://znamenka9.ru. At the time of the Court's examination of the case, that website shows that 9/12–1 Znamenka is a block of flats offered for sale. The applicants' former flat on the third floor appears to have been reduced to a flat of 85.8 m² (marked on the plan as "Flat F"). The website lauds the uniqueness and historicity of the neighbourhood, quotes poetry ("*Неподражаемой России незаменимая земля*" – "Inimitable Russia's irreplaceable land"), and extols the sights of the nearby Cathedral of Christ the Saviour, Kremlin, Pashkov House, and Zamoskvorechye.

B. Proceedings against the surveying agency

19. In October 2003 the first applicant requested a court to order Moszhilniiproekt to make available its survey report. From 2003 to 2006 different courts several times refused to examine this request due to the applicant's failure to comply with technical formalities, to pay a court fee, and to respect jurisdiction. On 27 April 2006 the Moscow City Court finally rejected the request because it was aimed at discovery of exhibits used in the applicant's other litigation and hence was not amenable to separate proceedings.

C. Proceedings against the development contract

20. In January 2005 the first applicant requested the Khamovnicheskiy District Court to invalidate the contract between the gallery, Tverskaya Finance, and the Moscow Government concerning the Znamenka development. On 25 April 2006 the Moscow City Court refused to examine that request because the first applicant no longer lived in Znamenka and hence was not personally affected by the contract.

II RELEVANT DOMESTIC LAW

21. Under section 35-3 of the Constitution, nobody can be deprived of his possessions save by a judicial decision. The compulsory taking of

property for State needs is possible only on condition of an equivalent preliminary reimbursement.

22. Under section 49-3 of the Housing Code of 1983 in force at the material time, if a building containing privatised flats was to be demolished pursuant to applicable laws, the local authority or the demolishing enterprise was, with the evicted owners' consent, to provide them with an equivalent residence or other compensation.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

23. The applicants complained that the expropriation of their flat served no public interest, and that no adequate replacement was given. They referred to Articles 1 and 8 of the Convention, Article 1 of Protocol No. 1, and Article 2 of Protocol No. 4. The Court will examine this complaint under Article 1 of Protocol No. 1, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

24. The Government argued that this complaint was manifestly ill-founded.

25. First, as a matter of principle, the authorities had enjoyed a wide margin of appreciation in town planning.

26. Second, the eviction had served the public interest of safety, because the building had been under the threat of collapse. According to Moszhilniiproekt's survey report, the building had been built before 1917 and had known no major repairs. Its wooden floor joists had been rotten and 70% worn out. Subfloor had partially collapsed. Wooden floors had been cracked, rotten, and 65% worn out. The basement and walls had lacked waterproofing. The walls had been damp. The front wall had had cracks under windows.

27. The building had been rebuilt into a business-centre, not a residence.

28. Third, the interference with the applicants' possession had been proportionate because the applicants had received adequate and immediate compensation. The replacement flat had been located within the same administrative district of Moscow, had met sanitary requirements, and had been fit for living. It had been 8% larger and 37% dearer than the flat in Znamenka. Besides, the authorities had offered a choice of replacement flats.

29. Last, the eviction had been lawful because the domestic courts had upheld the decrees of the Moscow Government. The decrees had been accessible and adequately formulated.

30. The applicants maintained their complaint. First, there had been no genuine public interest of safety, because the decision to expropriate the building (Decree 373-PP) had come before the survey report. The Moscow Government had used the building as a payment for the reconstruction of the gallery by Tverskaya Finance. If the concern for safety had been genuine, the residents would have been allowed to move back in after the repairs.

31. Moszhilniipoekt's report had been biased because it had been paid for by Tverskaya Finance. The alternative report had found the building safe.

32. Second, the interference had been disproportionate, because the replacement flat at 26 Krasnoprudnaya Street had been inadequate. Located far from Znamenka, it was no match to Znamenka's cultural landscape with its proximity to the Kremlin and Russian capital's heritage landmarks. The new environment had been close to busy railway stations, had suffered heavy road traffic and bad air. The new flat had had leaky windows, uneven floors, old wiring, cracked walls and ceiling, an unreliable lift, and an unsafe yard infested with rodents. The move to Krasnoprudnaya had been painful for the family because they had had to break established ties with doctors, schools, cultural activities, and parish. The other flats offered in replacement had been even worse.

33. Last, the interference had been unlawful because, contrary to the project's declared goals, the building had remained a residence, flats in which had been put on sale. The project itself had been unlawful too, because Tverskaya Finance had been awarded the contract without public bidding, and because heritage preservation rules had banned large-scale construction inside the Kremlin's conservation zone.

34. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. General principles

35. The Court reiterates that the international machinery of collective enforcement established by the Convention is subsidiary to the national systems safeguarding human rights. The national authorities remain free to choose the measures which they consider appropriate in those matters which are governed by the Convention. Review by the Court concerns only the conformity of these measures with the requirements of the Convention. (see the "Belgian Linguistic" case, 23 July 1968, § 10*,* Series A no. 6*)*.

36. In this vein, because of their direct knowledge of the society's needs, the national authorities are better placed than the international judge to asses "the public interest" underlying an interference with possessions. It is thus for them to determine both the existence of a public problem warranting deprivation of property and the remedial action to be taken.

37. Furthermore, "public interest" is an extensive notion that involves political, economic, and social issues, opinions on which may differ widely. The Court finds it natural that the authorities should have a wide margin of appreciation in implementing social and economic policies, and in particular land development and town planning schemes (see *Buckley v. the United Kingdom*, 25 September 1996, § 75, *Reports of Judgments and Decisions* 1996-IV; *Vassallo v. Malta*, no. 57862/09, § 36, 11 October 2011). It will therefore respect the authorities' determination of "the public interest" unless that determination be manifestly without reasonable foundation. In other words, although the Court cannot substitute its own assessment for that of the national authorities, it is bound to review the contested measures under Article 1 of Protocol No. 1 and, in so doing, to inquire into the facts with reference to which the national authorities acted (see *James and Others v. the United Kingdom*, 21 February 1986, § 46, Series A no. 98).

2. Application of the general principles in the present case

38. It is not in dispute that the expropriation of the applicants' flat amounted to an interference with their right to the peaceful enjoyment of their possessions. Accordingly, as they were deprived of their possessions within the meaning of the first paragraph of Article 1 of Protocol No. 1 what remains is to determine whether this was done "in the public interest and subject to the conditions provided for by law and by the general principles of international law".

39. The Moscow Government justified the expropriation of the applicants' property with the public interest of safety (see §§ 8, 10, 12 and 26 above). Whilst this interest is in itself legitimate, in the circumstances of the present case there is a number of inconsistencies that do not permit the conclusion that that interest was held genuinely.

40. First, the decision to take the property (Decree 373-PP) forewent the survey report that found the property unsafe. Indeed, the report was commissioned only after the applicants had opposed the expropriation.

41. Second, when commissioning the report from Moszhilniiproekt the authorities effectively admitted that the First Deputy of the prefect of the Central Administrative Circuit had requested to classify the building as dangerous. It would therefore seem that the conclusion of the report had been predetermined.

42. Third, if the applicants' eviction had been motivated only by concern for their safety, it would have been consistent to let them reoccupy the property after the necessary repairs.

43. Fourth, whereas under the original arrangement (Decree 373-PP) 40% of the reconstructed building was to go to the Moscow Government, in 2008 the whole of the building went to Tverskaya Finance (Decree 221-PP). The withdrawal of the authorities' share in the building diminished the public element of the transaction, and it became in essence an alienation of property from one private party (the applicants) to another (Tverskaya Finance).

44. Last, as a reason for ordering the expropriation, the Khamovnicheskiy District Court cited an eventual conversion of the building into non-residential premises. The Court agrees that this aspect is relevant for the assessment of "the public interest" and will therefore investigate today's fate of the building.

45. The parties argue about it. The Government state that the building has become an office space, without, however, explaining its public utility. The applicants insist that the building has become a luxury residence.

46. The Government rely on information taken from the Znamenka project's online showcase located at http://znamenka9.ru. The Court is mindful of the inherent fluidity of online sources, but the Government apparently deem that website reliable, and according to RIPN, Russian domain name registry, the website belongs to Tverskaya Finance. Therefore, the Court will analyse its contents.

47. The website's overall tone is commercial, it praises the benefits of owning a prestigious centrally located property. It leaves little doubt that 9/12–1 Znamenka is made up of flats for sale. The seller highlights the building's proximity to cultural landmarks – the same argument that the Khamovnicheskiy District Court found immaterial when it decided that the flat at Krasnoprudnaya was an adequate replacement. The information from the website is confirmed by estate agents' advertisements furnished by the applicants.

48. The Court therefore concludes that the building has become residential premises contrary to the project's declared goals (see § 6 above).

49. The Court recalls that it has recently declared inadmissible an application that concerned a *prima facie* similar set of circumstances. In

Sourlas v. Greece (no. 46745/07, dec. 17 February 2011) the applicant's centrally located flat in Athens was taken for the purpose of building the new Acropolis Museum, and the applicant contested the valuation of the flat by the authorities. But unlike in the case in hand, in the *Sourlas* case the implied public interest underlying the expropriation – the preservation and display of the nation's iconic cultural artefacts – was never questioned.

50. In view of the above considerations, the Court concludes that in the circumstances of the present case the public interest underlying the expropriation of the applicants' flat was not clearly and convincingly shown (see, *mutatis mutandis*, *Motais de Narbonne v. France*, no. 48161/99, § 22, 2 July 2002). There has, accordingly, been a violation of Article 1 of Protocol No. 1. In these circumstances there is no need to examine whether the other requirements of the first paragraph of Article 1 of Protocol No. 1 were fulfilled.

II. ALLEGED VIOLATON OF ARTICLE 6 OF THE CONVENTION

51. The applicants complained under Article 6 of the Convention that the domestic courts were intrinsically biased in favour of the Moscow Government because the Government supported them financially. Insofar as relevant, Article 6 reads as follows:

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

52. The Court notes that it has earlier rejected a similar complaint (see *Finogenov and Others v. Russia* (dec.), nos 18299/03 and 27311/03, § 243, 18 March 2010).

53. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

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

54. The first applicant complained under Articles 6 and 13 of the Convention about the domestic courts' refusal to examine in substance his actions against the surveying agency and the development contract.

55. The Court considers that these two actions, although technically distinct, were aimed at the determination of the first applicant's essential dispute – the one concerning the expropriation which the applicant had been able to plead before two levels of jurisdiction.

56. In these circumstances the Court considers that this complaint does not give rise to a separate issue and needs not to be examined.

IV. 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."

58. The applicants wished to have their flat in Znamenka returned. In the alternative, they claimed damage and costs.

A. Damage

59. The applicants claimed pecuniary damage in the amount of 1,989,000 Euros (EUR). This amount included the sale price of a renovated flat at 9/12–1 Znamenka (EUR 1,988,000), commuting costs accrued over the five years following their forced removal, settling-in expenses, expenses related to the installation of a telephone line, and the cost of medicines consumed to relieve stress.

60. The Government contested that claim as unfounded. No property valuation had shown that Krasnoprudnaya had been cheaper than Znamenka. The applicants might not pretend to a renovated flat, because the flat that had been taken from them had been decrepit. Most of the applicants' other alleged expenses had been unsupported by evidence.

61. In addition, each applicant claimed non-pecuniary damage in the amount of EUR 20,000 for the stress caused by their forced removal.

62. The Government contested that claim as excessive.

63. The Court notes that the applicants foremost wish to receive the expropriated flat back, and that the parties dispute the valuation of the properties. In these circumstances the Court considers that the question of pecuniary and non-pecuniary damage is not yet ready for decision. It should therefore be reserved to enable the parties to reach an agreement (Rule 75 §§ 1 and 4 of the Rules of Court).

B. Costs and expenses

64. The applicants also claimed EUR 270 for the costs and expenses incurred before the domestic courts and the Court.

65. The Government contested that claim as unsupported by evidence.

66. It is the Court's practice to reimburse costs and expenses only if they are actual, necessary, and reasonable. Having regard to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 24 for the proceedings before the Court.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* admissible the complaint concerning the expropriation of property and inadmissible the remainder of the application;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

3. *Holds* that, as regards pecuniary and non-pecuniary damage resulting from the violation found, the question of just satisfaction is not ready for decision and accordingly
   (a) *reserves* this question in whole;
   (b) *invites* the Government and the applicants to submit, within three months from the date of notification of this judgment, their written observations on this question and, in particular, to notify the Court of any agreement that they may reach;
   (c) *reserves* the further procedure and delegates to the President of the Chamber the power to fix it if need be;

4. *Holds*, as regards costs and expenses,
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 24 (twenty four Euros), plus any tax that may be chargeable to the applicants, to be converted into national currency at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 costs and expenses.

Done in English, and notified in writing on 14 February 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President