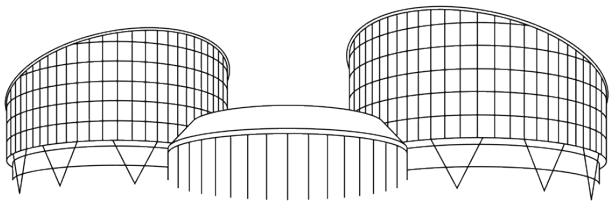

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF PETKO PETKOV v. BULGARIA

(Application no. 2834/06)

JUDGMENT

This version was rectified on 14 March 2013
under Rule 81 of the Rules of Court

STRASBOURG

19 February 2013

FINAL

19/05/2013

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

In the case of Petko Petkov v. Bulgaria,

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

Ineta Ziemele, *President,*
David Thór Björgvinsson,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Vincent A. De Gaetano,
Paul Mahoney, *judges,*
and Lawrence Early, *Section Registrar,*

Having deliberated in private on 29 January 2013,

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

PROCEDURE

1. The case originated in an application (no. 2834/06) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Petko Iliev Petkov, on 10 January 2006.

2. The applicant was represented by Ms M. Guncheva, a lawyer practising in Haskovo. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Dimova, of the Ministry of Justice.

3. The applicant alleged, in particular, that the dismissal of his inheritance claim on the basis of an unforeseeable procedural requirement stemming from an interpretative decision of the Supreme Court of Cassation which had not been communicated to him had breached his rights to effective access to court and peaceful enjoyment of his possessions.

4. On 15 March 2010 the application was communicated 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

5. The applicant was born in 1972 and lives in Haskovo.

6. In a will dated 21 March 1991 the applicant's father bequeathed his whole estate to his brother, Mr L.I. Subsequently, in a deed of donation

dated 29 December 1997, the applicant's father transferred to L.I. a share in a house and yard which belonged to him.

7. The applicant's father died on 22 December 2002.

8. On an unspecified date in 2003 the applicant brought an action against Mr L.I., claiming that the will of 1991 and the donation of 1997 infringed his right to a "reserved share" in his late father's estate. He also brought a partition claim against Mr L.I. in respect of two real properties. It appears that the applicant was represented by counsel.

9. On 15 May 2003 the Haskovo District Court rejected the applicant's claim as inadmissible. It reasoned that the applicant had not drawn up an inventory of the property in his father's estate, which was a procedural pre-requisite for claiming a reserved share from individuals who were not heirs-at-law of the deceased. The applicant appealed against the decision.

10. On 18 June 2003 the Haskovo Regional Court quashed the decision of 15 May 2003 and remitted the case for further examination. Relying on established case-law, it held that the applicant's uncle was an heir-at-law of the applicant's father within the meaning of section 30(2) of the Inheritance Act and that, therefore, the applicant was not required to have claimed his reserved share of the inheritance by means of an inventory.

11. In a judgment of 29 July 2004 the Haskovo District Court restored the applicant's reserved share in the two real properties and declared admissible his partition action. It held that the two dispositions made by the applicant's father had practically disinherited the applicant and had therefore violated his right to a reserved share, which amounted to half of his father's estate.

12. Following an appeal by Mr L.I., on 3 January 2005 the Haskovo Regional Court upheld the judgment of 29 July 2004. Relying on an interpretative decision of the Supreme Court of 1964, it rejected the defendant's objection that the applicant was not entitled to claim his reserved share because he had not claimed the inheritance through the drawing up of an inventory.

13. On 25 February 2005 Mr L.I. lodged an appeal on points of law. In a request filed on 7 June 2005 Mr L.I. asked the court to discontinue the proceedings relying on Interpretative Decision No. 1 of 2005, adopted by the Supreme Court of Cassation ("the SCC") on 4 February 2005, in which that court declared the relevant part of the interpretative decision of 1964 no longer applicable and considered that the term "heirs-at-law" in section 30(2) of the Inheritance Act 1949 should be interpreted as meaning only heirs-at-law who effectively succeeded to the deceased's estate (see paragraph 17 below). It is not clear whether the applicant was notified about this request before the hearing of the SCC held on 14 June 2005. In a judgment of 14 July 2005 the SCC quashed the judgment of 3 January 2005 and dismissed the applicant's claims. Relying on Interpretative Decision No. 1 of 4 February 2005, it held that the applicant had not complied with

the statutory requirements for claiming his reserved share, since he had not claimed the inheritance by means of an inventory.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Statutory conditions for claiming a reserved share and their interpretation by the domestic courts

14. The Inheritance Act of 1949 preserves to a certain circle of heirs a reserved share in their deceased relative's estate. If this share has been infringed by donations or wills made by their relative during his lifetime, such heirs may, within three years of his death, claim the reduction of such dispositions up to the amount of their reserved share. Pursuant to section 30(2) of the Inheritance Act, where the defendant to such an action is not an heir-at-law, the plaintiff must have identified the entirety of the inheritance by means of an inventory ("*onuc*"), an official list drawn up by the district judge on the basis of the heir's statements describing all reported items of the deceased's estate. There is no need of an inventory where the legatee is an heir-at-law. The right to take steps for the preparation of an inventory may be exercised within three months after the heir has learned about his relative's death. This period may be extended by the District Court by up to three months (section 61 of the Inheritance Act of 1949).

15. Pursuant to the case-law of the domestic courts, section 30(2) serves as a guarantee against possible fraudulent claims from heirs entitled to a reserved share against successors by will or donation who are not as closely related to the deceased and may therefore be unaware of the deceased's aggregate assets, and accordingly of whether the reserved share has indeed been infringed.

16. In a binding interpretative decision of 1964, the Supreme Court defined "heirs-at-law" as all potential heirs specified in the Inheritance Act of 1949, such as the surviving spouse, descendants, ascendants, siblings and more distant relatives, whether or not they actually inherited or were pre-empted by heirs of immediate priority.

17. On 4 February 2005 the SCC adopted Interpretative Decision No. 1 of 2005, which expressly declared the relevant part of the decision of 1964 no longer applicable. The court noted that there had been "social and legal changes" since 1964, such as the inclusion in the Inheritance Act of more distant relatives as potential heirs and the restitution of property nationalised by the communist regime. In the court's opinion, those changes could effectively prevent successors by will or deed, if not closely related to the deceased, from knowing the exact scope of his or her assets, and hence from defending themselves successfully against heirs claiming that their right to a reserved share had been infringed by such dispositions. On the basis of

those reasons, the court concluded that it was necessary to change the interpretation of the term "heirs-at-law" for the purposes of section 30(2) of the Inheritance Act to mean only heirs of immediate priority of succession, that is to say, only the individuals who effectively succeeded to the deceased's estate. As a result, since 4 February 2005, claiming an inheritance through an inventory has been considered a pre-requisite for bringing a claim against all successors by deed or will, save those with immediate priority of succession. The interpretative decision of 4 February 2005 did not envisage any interim rules or transition period for its application to pending proceedings.

18. In a judgment of 2009 (*реш. № 681 от 24.09.2009 г. по гр.д. № 3189/2008 г., I г.о. на ВКС*) the SCC found that the judicial interpretation of legal provisions had an effect from the date on which the latter had entered into force. It confirmed that the new interpretation of the term "heirs-at-law" given in the interpretative decision of 2005 was the result of the changing social and economic conditions described therein.

19. In subsequent judgments (*реш. № 698 от 06.01.2010 г. по гр.д. № 22/2009 г., II г.о. на ВКС; реш. № 82 от 16.03.2011 г. по гр.д. № 221/2010 г., II г.о. на ВКС; реш. № 324 от 16.10.2012 г. по гр.д. № 654/2011 г., I г.о. на ВКС*) the SCC noted that the courts had misinterpreted Interpretative Decision No. 1 of 2005, applying the requirement for an inventory also in cases where the plaintiff's deceased relative had bequeathed his entire estate in favour of the defendant. It held that in such cases the defendant had effectively succeeded to the estate of the deceased and therefore the disinherited plaintiff had not been required to make an inventory. It based its conclusion on its well-established case-law, according to which, in cases where the plaintiff had been disinherited in favour of the defendant, the former was only required to show his status of an heir entitled to a reserved share. The particular properties comprising the estate were of no relevance and the plaintiff was not required to produce evidence in that respect; in such cases the courts would reduce the dispositions made by the deceased in proportion to the reserved share of the plaintiff (*реш. № 752 от 10.10.1994 г. по гр.д. № 628/1994 г., I г.о. на ВКС; реш. № 187 от 20.04.2011 г. по гр.д. № 1780/2009 г., I г.о. на ВКС; опр. № 829 от 23.10.2012 г. по гр.д. № 619/2012 г., I г.о. на ВКС*). It concluded that the requirement for an inventory under section 30(2) of the Inheritance Act was applicable only in cases where the defendant had succeeded to particular items of the deceased's estate and not to the entire estate.

B. Interpretative decisions of the SCC

20. Pursuant to the Judiciary Act 1994, in force until 2007, interpretative decisions were adopted by the SCC in cases of incorrect or contradictory

case-law and were binding on the judiciary and the executive. The Judiciary Act 1994 did not provide that newly adopted interpretative decisions should be published or otherwise communicated to parties to pending proceedings.

C. Normative Acts Act 1973

Section 50 of the above Act provides:

> "1. The interpretation is [regarded as having] effect from the day on which the instrument which is being interpreted has entered into force.
>
> 2. Exceptionally, if retrospective interpretation may give rise to complications, the authority which has issued the interpretative decision may direct that the interpretation shall have effect only prospectively. In that case, the interpretation shall take effect three days after being published."

D. Reopening of proceedings following a judgment of the European Court of Human Rights

21. Pursuant to Article 303 § 1 (7) of the Code of Civil Procedure of 2007 ("the CCP"), civil proceedings may be reopened when a judgment of the European Court of Human Rights establishes that the Convention has been violated and when a fresh examination of the case is necessary in order to eliminate the consequences of the violation. The interested party may make the request no later than six months after the judgment has become final (Article 305 § 2 of the CCP). The request is examined by the SCC (Article 307 of the CCP).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

22. The applicant complained that the proceedings in his case had been unfair because the SCC had dismissed his action exclusively on the basis of a newly adopted interpretative decision which had not been accessible to him and which had introduced an unforeseeable procedural requirement. He relied on Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

23. 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. The parties' submissions

24. The applicant submitted that he had brought his action in compliance with section 30(2) of the Inheritance Act, as construed in the interpretative decision of 1964. He argued that the law, as it stood at the relevant time, had not required him to have accepted the inheritance through the drawing up of an inventory. However, the SCC had applied a new interpretation of that provision to the facts in his case, thereby retroactively introducing such a requirement. The applicant further complained that the SCC had relied on an interpretative decision which had been neither published nor communicated to the parties, and that he had therefore been unable to adduce any arguments as to its applicability and relevance to his case.

25. The Government submitted that the SCC had applied the domestic legislation correctly and in compliance with its own jurisprudence, as it stood at the relevant time.

2. The Court's assessment

26. The Court reiterates that Article 6 § 1 embodies the "right to a court", of which the right of access, that is, the right to institute proceedings before a court in civil matters, constitutes one aspect. Whether a person has an actionable domestic claim may depend not only on the content, properly speaking, of the relevant civil right as defined under national law but also on the existence of procedural bars preventing or limiting the possibilities of bringing potential claims to court. In the latter kind of case Article 6 § 1 may be applicable (see *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 47, ECHR 2001-XI).

27. The right to access to court is not absolute, but may be subject to limitations; these are permitted by implication, since the right of access by its very nature calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. Nevertheless, the limitations applied must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality

between the means employed and the aim sought to be achieved (see *Tinnelly & Sons Ltd and Others and McElduff and Others v. the United Kingdom*, 10 July 1998, § 72, *Reports of Judgments and Decisions* 1998-IV).

28. The Court notes that the Inheritance Act of 1949 creates a statutory right, which arises at the time of the relative's death, for an heir to claim the reduction of the dispositions made by his relative during his lifetime if they happen to infringe his or her entitlement to a reserved share. The heir may claim such a reduction against any beneficiary. It is only when the beneficiary is not an "heir-at-law" that the Act adds an additional requirement for bringing a claim: the inheritance must have been claimed through the preparation of an inventory, that is, a list of the property comprising the deceased's estate. The domestic courts uphold that procedural requirement only if they are satisfied that the defendant is not an "heir-at-law". The Court therefore considers that the requirement should be seen not as qualifying a substantive right but as a procedural bar to the domestic courts' power to determine the right. It follows that the action brought by the applicant fell within the scope of Article 6 under its civil head.

29. The Court further notes that the SCC, in applying a new interpretation of the term "heir-at-law", dismissed the applicant's claim on the ground that he had not claimed the inheritance through the preparation of an inventory (see paragraph 13 above).

30. It therefore falls to the Court to ascertain whether the procedural restriction applied by the SCC was clear, accessible and foreseeable within the meaning of the Court's case-law, whether it pursued a legitimate aim and whether it was proportionate to that aim (see, *mutatis mutandis*, *Lupaş and Others v. Romania*, nos. 1434/02, 35370/02 and 1385/03, § 67, ECHR 2006-XV (extracts)).

31. The Court notes that the term "heir-at-law" was not defined in the Inheritance Act of 1949. Until 2005, it was defined in an interpretative decision of 1964, which was followed by the district and regional courts in the applicant's case (see paragraphs 11-12 above). According to that definition, "heir-at-law" meant any potential heir specified in the Inheritance Act of 1949 (see paragraph 16 above). Therefore, the Court considers that when the applicant brought his claim, he could reasonably have expected that his uncle (a potential heir under the Inheritance Act of 1949) would be considered by the courts as an "heir-at-law" and that the requirement to list the property comprising the estate in an inventory would not apply to his case. It was only after the delivery of the second instance's judgment in the applicant's case in 2005 that the SCC adopted a new interpretative decision, which changed the scope of the term "heir-at-law" to exclude the applicant's uncle from that category. The new interpretation not only prevented him from having his claim determined by a court, but it also

became an insurmountable obstacle to any future attempts on his part to recover his reserved share, given that the time-limit for preparing an inventory had long expired (see paragraphs 7 and 14 above).

32. The Court reiterates that the accessibility, clarity and foreseeability of legal provisions and case-law, notably as regards rules on form, time-limits and prescription, assure the effectiveness of the right to access to court (see *Legrand v. France*, no. 23228/08, § 37, 26 May 2011; *mutatis mutandis*, *Hoare v. the United Kingdom* (dec.), no. 16261/08, §§ 54-55, 12 April 2011; and *Lupaş and Others*, cited above, §§ 67-69). While case-law development is not, in itself, contrary to the proper administration of justice (see *Legrand*, cited above, § 37), in previous cases where changes in domestic jurisprudence had affected pending civil proceedings, the Court was satisfied that the way in which the law had developed had been well-known to the parties, or at least reasonably foreseeable, and that no uncertainty had existed as to their legal situation (see *Unédic v. France*, no. 20153/04, § 75, 18 December 2008; *Şen and Others v. Turkey* (dec.), no. 24537/10, 14 February 2012; *Hoare* (dec.), § 55, and *Legrand*, § 40, both cited above). In *Legrand* the Court emphasised that the new legal principle introduced by the Court of Cassation, and which had the effect of thwarting the applicant's pending civil action, had its origin in the need to address inconsistencies in the case-law of which the applicant was aware at the time of initiating his proceedings (§ 42). In *C.R. v. the United Kingdom* (22 November 1995, § 41, Series A no. 335-C), the Court found that the principle of legality was not breached where the development of the law in a particular area had reached a stage where judicial recognition was reasonably foreseeable. In *Hoare* ((dec.), cited above, § 55), which concerned a change of the law of limitation in sexual abuse cases, the Court noted that the unsatisfactory character of the law as it stood at the relevant time had been raised long before the proceedings against the applicant, and found that the departure from the previous case-law in the applicant's case had been no more than a reasonably foreseeable development of the law of limitation, which, moreover, had been very well explained and substantiated by the domestic courts.

33. In the instant case, however, while the restitution process and the other legal developments which motivated the SCC to amend the interpretation of the term "heir-at-law" were known, it appears that the side effect of that new interpretation on cases pending at the cassation level such as the applicant's was not foreseen even by the SCC. In its subsequent judgments the SCC found that the courts had interpreted the formal requirement for an inventory too strictly and had applied it even in cases where the defendant had succeeded to the deceased's entire estate (see paragraph 19 above). Thus, according to the SCC, the courts had unduly disregarded the well-established case-law according to which, in cases where the defendant had inherited the entire estate, the requirement for an

inventory would not apply and the disinherited plaintiff would only be required to prove that he was entitled to a reserved share in that estate (ibid.). Therefore, in view of the state of the law resulting from the Inheritance Act of 1949 and the case-law of the SCC, it appears that at the relevant time the applicant was unable to reasonably foresee that an interpretation of the subsequently amended law would require him to make an inventory in order to claim his reserved share from his uncle at the time when this possibility was open to him. The Court is not convinced that the otherwise reasonable aim pursued by that requirement (see paragraph 15 above) could not have been attained in an adversarial trial rather than by barring the applicant's claim, given that the success of such a claim depended on the plaintiff's ability to show that the dispositions made by his deceased's relative amounted to a certain portion of the estate affecting that plaintiff's reserved share. In the instant case the applicant was totally disinherited in favour of his uncle (see paragraphs 6 and 19 above). The Court further notes that the interpretative decision did not contain provisions on its applicability to pending proceedings. Regrettably, the SCC gave no consideration to those factors or to a possible different approach, but applied the new interpretation automatically, regardless of its consequences on the applicant's right to have his pending case determined on the merits. The extent of the prejudice suffered by the applicant thus sets his case apart from the applicants in the above-mentioned *Legrand* case in which the Court emphasised that the new legal principle established by the Court of Cassation did not in the circumstances of the applicants' case have the effect of depriving them – even retrospectively – of their right to access to court (see § 41 of that judgment).

34. For the above reasons, the Court concludes that the unforeseeability of the procedural requirement applied retroactively in the applicant's pending case restricted his access to court to such an extent that the very essence of that right was impaired.

35. It follows that there has been a breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

36. The applicant also complained that his right to peaceful enjoyment of his possessions had been violated because the new interpretation of the law introduced retroactively requirements for his claim which had not existed when he had brought it. He relied on Article 1 of Protocol No. 1, which provides:

> "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."

37. The Government reiterated the arguments they had put forward in respect of the complaint under Article 6.

38. The Court notes that the complaint under Article 1 of Protocol No. 1 is directly connected with the one examined under Article 6 § 1 of the Convention, and should therefore be declared admissible.

Having regard to its conclusions under Article 6 that the applicant was unduly prevented from obtaining a determination of his alleged entitlement to recover his reserved share in his father's estate, and without prejudice to the question whether the applicant had a possession within the meaning of Article 1 of Protocol No. 1, Court considers that it is not necessary to rule on the complaint under this head.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant claimed 17,425 levs (BGN), the equivalent of approximately 8,909 euros (EUR), in respect of pecuniary damage. He submitted that this had been the value of two real properties inherited by his uncle and subsequently sold to third parties. He also claimed EUR 1,000 in respect of non-pecuniary damage[1].

41. The Government contested that claim as unsubstantiated and excessive.

42. The Court notes that in the present case an award of just satisfaction can only be based on the fact that the applicant did not have the benefit of the guarantees of Article 6 § 1 of the Convention. It reiterates that where a violation of Article 6 is found, the applicant should, as far as possible, be put in the position that he would have been in had the requirements of that

1. Rectified on 14 March 2013: Former paragraph 40 "The applicant did not submit a claim for just satisfaction. Accordingly the Court considers that there is no call to award him any sum on that account." was deleted. The following paragraphs were renumbered.

provision not been disregarded, and that the most appropriate form of redress would, in principle, be a retrial or the reopening of the proceedings, if requested (see *Yanakiev v. Bulgaria*, no. 40476/98, §§ 89-90, 10 August 2006). It notes, in this connection, that Article 303 § 1 (7) of the CCP (see paragraph 21 above), allows the reopening of domestic proceedings if the Court has found a violation of the Convention or its Protocols. On the other hand, the Court considers that the applicant must have suffered non-pecuniary damage for which the finding of a violation does not constitute sufficient reparation. Ruling on an equitable basis as required by Article 41 of the Convention, the Court awards the entire amount claimed by the applicant in respect of non-pecuniary damage, that is, EUR 1,000.

B. Costs and expenses

43. The applicant claimed EUR 1,000 in respect of legal fees for twenty hours of legal work at an hourly rate of EUR 50. He further claimed EUR 200 in respect of translation and postage expenses. He submitted a fees agreement drawn up with his legal representative and an invoice for translation services for the sum of BGN 110 (EUR 56). He requested that any award made in respect of legal fees be paid directly into the bank account of his legal representative, Ms M. Guncheva.

44. The Government considered that the claims were excessive.

45. According to the Court's case-law, costs and expenses claimed under Article 41 must have been actually and necessarily incurred and reasonable as to quantum. In the present case, having regard to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 1,000 in respect of legal fees, plus any tax that may be chargeable to him, to be paid into the bank account of his legal representative.

46. As for the claim for other expenses, the Court observes that the applicant has provided supporting documents only for the sum paid for translation services (EUR 56). It therefore awards him that amount, plus any tax that may be chargeable to him.

C. Default interest rate

47. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that it is not necessary to rule on the alleged violation of Article 1 of Protocol No. 1 to 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, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:
      (i) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,056 (one thousand and fifty-six euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, of which EUR 56 (fifty-six euros) is to be paid to the applicant himself, and the remainder is to be paid into the bank account of his legal representative;
   (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 19 February 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Registrar	Ineta Ziemele President