

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

FOURTH SECTION

CASE OF BRAUN v. POLAND

(Application no. 30162/10)

JUDGMENT

STRASBOURG

4 November 2014

FINAL

04/02/2015

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



In the case of Braun v. Poland,

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

Ineta Ziemele, *President,*
Päivi Hirvelä,
George Nicolaou,
Nona Tsotsoria,
Zdravka Kalaydjieva,
Krzysztof Wojtyczek,
Faris Vehabović, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 7 October 2014,

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

PROCEDURE

1. The case originated in an application (no. 30162/10) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr Grzegorz Michal Braun ("the applicant"), on 29 May 2010.

2. The applicant was represented by Mr S. Hambura, a lawyer practising in Berlin. The Polish Government ("the Government") were represented by their Agent, Ms J. Chrzanowska, of the Ministry of Foreign Affairs.

3. The applicant alleged that his right to freedom of expression was breached in violation of Article 10 of the Convention.

4. On 14 March 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1967 and lives in Wrocław.

6. The facts of the case, as submitted by the parties, may be summarised as follows.

7. The applicant is a film director, historian, and author of press articles often commenting on current issues. The Government contested that the applicant could be considered a journalist.

8. On 20 April 2007 the applicant participated in a debate on a regional radio station, Polskie Radio Wrocław. During the debate he stated as follows:

> "... among the informers (*informator)* of the [communist-era] secret political police is Professor [J.M.] – this information confirms the theory that among those who speak out the most against lustration are people who have good reasons for doing so."

9. On the same day the applicant called Mr J.M. an "informant" (*konfident*) on television. The matter was widely commented on in the media.

10. On 17 May 2007 a special commission set up at Wrocław University to examine the problem of covert surveillance of academics issued a statement in the case of Mr J.M. The statement included a list of documents concerning Mr J.M., which had been found in the archives. The commission concluded that those documents had not led it to the unequivocal conclusion that Mr J.M. had been a collaborator with the secret police.

11. On 24 May 2007 Mr J.M. brought a civil action for protection of his personal rights against the applicant.

12. On 3 July 2008 the Warsaw Regional Court allowed the action. It ordered the applicant to pay 20,000 Polish zlotys (PLN) to a charity and to reimburse the claimant PLN 5,800 for the costs of the proceedings. The applicant was also ordered to publish an apology for having damaged the claimant's good name in six national and regional newspapers, on three national TV channels and on Radio Wrocław. The court considered that the applicant had clearly used several expressions indicating that the claimant had been a secret collaborator with the communist-era secret services. The main question to be considered was whether such statements could be considered true.

13. The court noted that Mr J.M. was a distinguished linguist and well-known person in Poland. He was a member of the Polish Language Council and for many years had been presenting a programme on television. The court established that between 1975 and 1984 Mr J.M. had been summoned by agents of the secret services on five occasions for interviews in connection with applications he had made for passports and returns from stays abroad. This was not contested by the claimant, who had himself made this information public. In 1978 Mr J.M. had been formally registered as a secret collaborator (a "TW"). Other notes from the Institute of National Remembrance ("IPN") archives indicated that until 1989 a two-volume file on the claimant had existed; however, the file could no longer be found at the Wrocław branch of the IPN.

The court noted that the case of Mr J.M. had been examined by a special commission set up at Wrocław University to examine the problem of covert surveillance of academics, but that the commission had been unable to reach any unequivocal conclusions.

14. The trial court heard the applicant and the claimant as well as a number of witnesses: historians (specialists on lustration), former agents of the secret services assigned to recruiting collaborators at Warsaw University, and employees of the IPN. Some of them testified that many files on secret collaborators had been destroyed when the regime fell in 1989. A few witnesses testified that they had not known of any case of fictitious registration of somebody as a secret collaborator or of a situation in which the services had kept a file on somebody for many years even though he or she had not actually been collaborating.

The director of the Wrocław branch of the IPN testified that he had heard of an instance of fictitious registration of somebody as a TW. However the probability of such a situation was very low. He also declared that on the basis of the available documents, he would not have concluded that the claimant had been a communist police informant. Another historian called to testify declared that it had been impossible to draw any unequivocal conclusions. A third historian stated that the claimant had been a "real agent of the security service". A fourth historian testified that the internal files of the secret services were reliable; the regime would only falsify documents for external purposes. The same witness considered that on the basis of the information available to him, he would also have concluded that Mr J.M. had been an intentional and secret collaborator with the communist-era secret services.

Two other witnesses, former agents of the secret services, were unable to remember whether they had recruited Mr J.M. as a secret collaborator.

15. The applicant submitted that once he had discovered that Mr J.M. was on the list of secret collaborators with the secret services it had been his duty to inform the public about it. His intention had not been to offend the claimant. He had acted in the general interest, taking part in a public debate on matters of considerable importance to society. Moreover, his assertion had been provoked by public statements made by the claimant, who had questioned the importance of lustration. The applicant also argued that he had not alleged that the claimant had caused harm to other people or that he had been paid for his services. The information provided by him - that J.M. had been a collaborator - had therefore been truthful and given in the public interest.

16. Nevertheless, the court noted that no documents confirming that the claimant had agreed to be a collaborator or that he had actively reported to the secret services were available. The court referred to the definition of collaboration contained in the 1997 Lustration Act and reiterated that collaboration had to be intentional, secret and consist of passing on information. It concluded that registration by the secret services alone was not sufficient to consider that someone had been a secret collaborator.

17. The applicant lodged an appeal against the judgment. He argued that the registration of Mr J.M. as a secret collaborator by the services, in light

of generally known facts, had allowed him to conclude that he had been a collaborator. Mr J.M. had remained registered as a TW for eleven years, his files had been destroyed, and the secret services had not been known for falsifying their internal files. According to historians, in 1989 the services had only destroyed the files of important collaborators. The applicant underlined that he had acted in the general interest as the claimant had been a public figure who had recently criticised the process of lustration.

18. On 29 October 2008 the Wrocław Court of Appeal dismissed the appeal. It further ordered the applicant to pay the claimant PLN 2,000 as reimbursement of the costs of the appellate proceedings. The court accepted all the findings of the first-instance court regarding the facts of the case. It considered that when personal rights had been breached by a statement of alleged facts, the illegality of such action could be excluded only if the statement contained truthful information. Acting in the general interest did not exclude responsibility for making untrue statements. In the present case there was no evidence, in the form of either documents or witness statements, proving that Mr J.M. had indeed actively collaborated with the secret services. Therefore, in the light of the material collected in the case, the court concluded that the applicant had not proved the veracity of his statements. Furthermore, the court considered that the applicant had not fulfilled his duty to act with particular diligence and caution in making serious allegations on the basis of unconfirmed circumstantial evidence.

19. The applicant lodged a cassation appeal against the judgment and requested that a hearing be held.

20. At the hearing, held on 10 September 2009, the Supreme Court announced the judgment and gave an oral summary of the reasons. It dismissed the applicant's cassation appeal but amended the text of the apology and limited its reach to one national daily newspaper and Radio Wrocław. The applicant was ordered to reimburse the claimant a further PLN 2,000 for the costs of the cassation proceedings.

The text of the apology to be published by the applicant was as follows:

> "I apologise to Professor J.M. for having made, on 20 April 2007, the untrue assertion that he had been an informer of the [communist-era] political police".

21. Following the announcement of the judgment the applicant's lawyer requested the court to prepare written reasons and to deliver them to him. The Supreme Court's judgment with reasons, fifteen pages long, was received by the applicant's lawyer on 30 November 2009.

22. In analysing the interplay between two competing rights – the right to freedom of expression and the right to protect one's good name – the court referred to a resolution of the Supreme Court (18 February 2005, III CZP 53/04 OSNC 2005, nr 7-8, p 114). According to the conclusion of this resolution a journalist's actions would not be considered illegal if they were made in the public interest and the duty to act with due diligence was

fulfilled. Imposing an obligation on a journalist to prove the veracity of each statement would unjustifiably limit the freedom of the press in a democratic society. However, the Supreme Court considered that this approach could not be applied to the applicant's case as his statement had been of a private nature and the applicant could not be considered to be a journalist with a socially necessary duty to inform. Therefore, the interpretation of the law adopted by the lower courts was correct. Making false allegations was illegal, whereas the question of due diligence would be taken into account only when assessing the fault of the defendant.

23. The court agreed with the facts as established by the lower courts in particular as regards the conclusion that the statement made by the applicant had not been true. Following the approach taken in the case thus far, the court considered that making an untrue statement that offended the personal rights of a person would always be contrary to the law. Breaching someone's personal rights would not be against the law only if the statement could be proven to be true. An untrue statement would remain illegal even if all efforts had been made to diligently collect and examine its factual basis. In consequence, whether the applicant had acted in good faith and in the public interest or believed that the statement had been true did not influence the illegality of his action and could only be considered when assessing his financial liability for offending the personal rights of Mr J.M.

II. RELEVANT DOMESTIC LAW AND PRACTICE

24. Article 23 of the Civil Code contains a non-exhaustive list of the rights known as "personal rights" (*dobra osobiste*). This provision states:

> "The personal rights of an individual, such as, in particular, health, liberty, reputation (*cześć*), freedom of conscience, name or pseudonym, image, secrecy of correspondence, inviolability of the home, scientific or artistic work, [as well as] inventions and improvements shall be protected by the civil law regardless of the protection laid down in other legal provisions."

25. Article 24 of the Civil Code provides for ways of redressing infringements of personal rights. According to that provision, a person facing the danger of an infringement may demand that the prospective perpetrator refrain from the wrongful activity, unless it is not unlawful. Where an infringement has taken place, the person affected may, *inter alia*, request that the wrongdoer make a relevant statement in an appropriate form, or claim just satisfaction from him or her. If an infringement of a personal right causes financial loss, the person concerned may seek damages.

26. The definition of collaboration was the same under the Law of 11 April 1997 on disclosing work for or service in the State's security services or collaboration with them between 1944 and 1990 by persons

exercising public functions (section 4(1) of the 1997 Lustration Act) and the new Lustration Act of 2006 (section 3 a(1)). It provided as follows:

> "Collaboration within the meaning of this law is an intentional and secret collaboration with operational or investigative branches of the State's security services as a secret informer or assistant in the process of gathering information."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

27. The applicant complained under Article 10 of the Convention of a breach of his right to freedom of expression. This Article reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

28. The Government contested that argument.

A. Admissibility

29. The Government raised a preliminary objection that the applicant had failed to comply with the six-month time-limit as required under Article 35 § 1 of the Convention. They referred to the fact that the final judgment in the applicant's case had been given by the Supreme Court at the hearing of 10 September 2009 while the applicant had lodged his application with the Court on 29 May 2010. The Government underlined that the applicant had not been entitled to be served automatically with a copy of the judgment with the reasoning as the judgment had been delivered at a hearing.

30. The applicant disagreed. He submitted that he had had the right to be served with a copy of the Supreme Court's judgment with the reasoning and had availed himself of that right. Moreover, an oral summary of the reasons presented at the hearing had not been a sufficient basis on which to prepare an application alleging a breach of the Convention. The applicant received that judgment with reasons on 30 November 2009 and he had lodged his application with the Court within less than six months from that date.

31. The Court notes that the Government alleged that the applicant had introduced his application out of time and that it should be rejected in accordance with Article 35 §§ 1 and 4 of the Convention. The Court observes that the Supreme Court held a hearing on 10 September 2009 at which it announced the ruling and gave the main lines of reasoning orally (see paragraph 20 above). Subsequently, it was open to the applicant to apply to be served with a written copy of the full version of the reasons. The applicant's lawyer did that and on 30 November 2009 he received the judgment with the reasoning (see paragraph 21 above). While it is true that the written copy of the Supreme Court's judgment was not served automatically, nevertheless this service was available to the applicant upon request and its long delay was exclusively the responsibility of the judicial authorities. The said judgment, which in its final version ran to fifteen pages, contained detailed legal reasoning. In those circumstances the Court considers that the object and purpose of Article 35 § 1 of the Convention are best served by counting the six-month period as running from the date of service of the written judgment (see *Worm v. Austria*, § 33, 29 August 1997, *Reports of Judgments and Decisions* 1997-V, and *Jałowiecki v. Poland*, no. 34030/07, § 21, 17 February 2009). The applicant lodged his application with the Court on 29 May 2010, thus within less than six months from the date the judgment was served on him. It could not therefore be said that the application was introduced out of time. The Government's objection should be dismissed.

32. The Court notes that application 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. Arguments of the parties

33. The applicant submitted that he had been an active journalist for many years and had often participated in public debates on issues relating to the recent history of Poland. The radio debate from which the present case originated was one of a series of public discussions on a range of political issues, including lustration. He had, therefore, been fulfilling his rightful mission to inform the public about an important matter relating to a public figure. The applicant had become aware that Mr J.M. had been a collaborator with the secret services after having consulted all the available documents and other sources which he needed to protect. He had not intended to offend Mr J.M. but only to contribute to a debate about the importance of lustration, which J.M had criticised. Taking into account all

those elements the applicant considered that his statement did not overstep the limits of protection afforded to him by Article 10 of the Convention.

34. The Government considered that the application was manifestly ill-founded. They contested that the applicant should be treated as a journalist; however, in any event he had not complied with the ethical rules of diligent and responsible journalism. He was well acquainted with the issues of lustration and had thus been aware of the nature and severity of his accusation against Mr J.M. The Government underlined that being registered by the secret services had not been the same as being an informant or actual collaborator. However, the applicant had not provided any evidence supporting, even partially, his allegation.

35. The Government concluded that it had been necessary in the instant case to protect the rights of Mr J.M. from untrue defamatory allegations made by the applicant. The applicant was found liable in civil proceedings and ordered to publish an apology, reimburse the claimant's costs, and make a payment to a charity. The consequences of the interference had been much more lenient than they would have been had the applicant been convicted in criminal proceedings.

2. The Court's assessment

(a) General principles

36. The Court reiterates that freedom of expression, as secured in paragraph 1 of Article 10, constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society" (see, among many other authorities, *Oberschlick v. Austria (no. 1)*, judgment of 23 May 1991, Series A no. 204, § 57, and *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 43, ECHR 1999-VIII).

37. There is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on questions of public interest (see *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV).

38. The test of whether an interference is "necessary in a democratic society" requires the Court to determine whether the interference complained of corresponded to a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as

protected by Article 10 (see, among many other authorities, *Perna v. Italy* [GC], no. 48898/99, § 39, ECHR 2003-V, and *Association Ekin v. France*, no. 39288/98, § 56, ECHR 2001-VIII).

39. Under the terms of paragraph 2 of Article 10 of the Convention, freedom of expression carries with it "duties and responsibilities", which also apply to the media. Moreover, these "duties and responsibilities" are liable to assume significance when there is a question of attacking the reputation of a named individual and infringing the "rights of others".

There is no doubt that Article 10 § 2 enables the reputation of others - that is to say, of all individuals – to be protected; but in such cases the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues (see *Lingens*, cited above, § 42).

40. The Court reiterates that the protection of the right of journalists to impart information on issues of general interest requires that they should act in good faith and on an accurate factual basis and provide "reliable and precise" information in accordance with the ethics of journalism (see, for example, *Fressoz and Roire*, § 54; *Bladet Tromsø and Stensaas*, § 58, and *Prager and Oberschlick,* § 37, all cited above). The same principles must apply to others who engage in public debate (see *Steel and Morris v. the United Kingdom*, no. 68416/01, § 90, ECHR 2005-II).

41. The Court's task in exercising its supervisory function is not to take the place of the competent domestic courts but rather to review under Article 10 the decisions they have taken pursuant to their power of appreciation (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 45, ECHR 1999-I). In particular, the Court must determine whether the reasons adduced by the national authorities to justify the interference were "relevant and sufficient" and whether the measure taken was "proportionate to the legitimate aims pursued" (see *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI). In doing so, the Court has to satisfy itself that the national authorities, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10 (see, among many other authorities, *Zana v. Turkey*, 25 November 1997, *Reports* 1997-VII, pp. 2547-48, § 51).

(b) Application of the general principles to the present case

42. The Court notes that it is undisputed that the civil proceedings against the applicant amounted to an "interference" with the exercise of his right to freedom of expression. The Court also finds, and the parties agreed on this point, that the interference complained of was prescribed by law, namely Articles 23 and 24 of the Civil Code, and was intended to pursue a legitimate aim referred to in Article 10 § 2 of the Convention to protect "the reputation or rights of others". Thus the only point at issue is whether the interference was "necessary in a democratic society" to achieve that aim.

43. The applicant in the instant case took part in a radio debate during which he stated that the claimant, Mr J.M., had been a secret collaborator with the communist regime. The domestic courts examined the veracity of this statement, heard experts and researched the remaining files of the communist-era security services. Although they confirmed that the claimant had indeed been registered as a collaborator and in the past there had been a two-volume-file on him, the file in question could no longer be found. The courts thus concluded that it could not be proven that the claimant had intentionally and secretly collaborated with the regime within the meaning of the domestic law on lustration. The applicant's statement was considered untrue. According to the domestic court's assessment untrue statements infringing upon another person's rights had to be considered illegal.

44. The Court takes note that the accusation was serious for Mr J.M., who is a well-known and popular language specialist. To call somebody a secret collaborator with the communist-era security services carries a negative assessment of his behaviour in the past and is surely an attack on his good name. The Court reiterates that the right to protection of reputation is a right which is protected by Article 8 of the Convention as part of the right to respect for private life (see *Chauvy and Others*, cited above, § 70; *Polanco Torres and Movilla Polanco v. Spain*, no. 34147/06, § 40, 21 September 2010; and *Couderc and Hachette Filipacchi Associés v. France*, no. 40454/07, § 53, 12 June 2014). The domestic authorities were therefore faced with the difficult task of balancing two conflicting values, namely freedom of expression of the applicant on the one hand and Mr J.M.'s right to respect for his reputation on the other (see *Axel Springer AG v. Germany* [GC], no. 39954/08, § 84, 7 February 2012).

45. In assessing the necessity of the interference, it is important to examine the way in which the relevant domestic authorities dealt with the case, and in particular whether they applied standards which were in conformity with the principles embodied in Article 10 of the Convention (see paragraph 41 above).

46. The Court notes that the Supreme Court differentiated between the standards applicable to journalists and those applicable to other participants in the public debate. It did so, without examining whether such a differentiation would be compatible with Article 10 of the Convention. According to the Supreme Court, the standard of due diligence and good faith should be applied only to journalists who fulfil an especially important social function. Other persons were required by the Supreme Court to meet a higher standard in that they were to prove the veracity of their allegations (see paragraph 22 above). In such case the question of due diligence would be taken into account only when establishing their fault i.e. the sanction. In the instant case the domestic courts found the applicant to be in the latter category, and in view of his inability to prove the truth of his statement, they concluded that he had breached the claimant's personal rights.

47. The Government and the domestic courts claimed that the applicant was not a journalist. On the other hand the applicant insisted that he had been active in professional journalism for many years. However, in any case the question of whether the applicant was a journalist within the meaning of the domestic law, is not of particular relevance in the circumstances of the instant case. The Court reiterates that the Convention offers a protection to all participants in debates on matters of legitimate public concern.

48. The Court notes that the applicant was a historian, the author of press articles and television programmes, and someone who actively and publicly commented on current affairs. The domestic courts acknowledged that the applicant was a publicist and that given his professional experience, and the fact that he was a "specialist" on the subject, he had been invited to participate in the radio programme on lustration. Nevertheless they found the applicant's intervention to be of a private nature. The Court also notes that when assessing the legality of his actions the Supreme Court failed to address the question of whether the applicant had been engaged in public debate.

49. The Court is not called upon to prejudge whether the applicant in the instant case relied on sufficiently accurate and reliable information. Nor will it decide whether the factual basis on which the applicant had relied on justified the nature and degree of the serious allegation he had made. This was the task of the domestic courts, which are in principle better placed to assess the factual circumstances of the case. However, when deciding these issues the domestic courts should observe the standards of freedom of expression enshrined in the Convention.

50. The Court considers that the applicant in the case under consideration had clearly been involved in a public debate on an important issue (see *Vides Aizsardzības Klubs v. Latvia*, no. 57829/00, § 42, 27 May 2004). Therefore the Court is unable to accept the domestic courts' approach that required the applicant to prove the veracity of his allegations. It was not justified, in the light of the Court's case-law and in the circumstances of the case, to require the applicant to fulfil a standard more demanding than that of due diligence only on the ground that the domestic law had not considered him a journalist.

The domestic courts, by following such an approach, had effectively deprived the applicant of the protection afforded by Article 10.

51. Although the national authorities' interference with the applicant's right to freedom of expression may have been justified by a concern to restore the balance between the various competing interests at stake, the reasons relied on by the domestic courts cannot be considered relevant and sufficient under the Convention. This conclusion cannot be altered by the relatively lenient nature of the sanction imposed on the applicant.

There has accordingly been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicant claimed PLN 50,000 in respect of pecuniary damage. This sum represented PLN 2,000 and PLN 5,800 paid by the applicant to the claimant as reimbursement of the costs of the proceedings, PLN 20,000 paid to a charity and the costs of publishing the apology ordered by the domestic courts. The applicant attached a notice from the court's bailiff ordering him to pay PLN 33,000 (approximately EUR 8,000 euros (EUR)) in execution of the judgments together with fees.

As regards non-pecuniary damage, the applicant claimed EUR 10,000.

54. The Government considered that the claims were excessive and unsubstantiated.

55. The Court finds that in the circumstances of the case there is a causal link between the violation found and the alleged pecuniary damage as the first applicant referred to the amount which he was ordered to pay by the domestic courts (see *Busuioc v. Moldova*, no. 61513/00, § 101, 21 December 2004, and *Kuliś and Różycki v. Poland*, no. 27209/03, § 44, 6 October 2009). The Court awards the first applicant the sum claimed in full, that is, EUR 8,000.

56. The Court accepts that the applicant also suffered non-pecuniary damage which is not sufficiently compensated for by the finding of a violation of the Convention. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,000 under this head.

B. Costs and expenses

57. The applicant also claimed EUR 3,000 for the costs and expenses incurred before the Court. He attached an invoice from his lawyer.

58. The Government considered the applicant's claim excessive.

59. 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 documents in its possession and the above criteria, the Court considers it reasonable to award the sum claimed in full.

C. Default interest

60. 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 10 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 3,000 (three 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;

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

Done in English, and notified in writing on 4 November 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Ineta Ziemele
Deputy Registrar	President