CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF IVANOV v. UKRAINE

(Application no. 15007/02)

JUDGMENT

STRASBOURG

7 December 2006

FINAL

07/03/2007

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

In the case of Ivanov v. Ukraine,

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

Mr P. LORENZEN, *President*,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER,
Mr M. VILLIGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 13 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 15007/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Vyacheslav Aleksandrovich Ivanov ("the applicant"), on 15 January 2002.

2. The Ukrainian Government ("the Government") were represented by their Agent, Mrs V. Lutkovska.

3. On 30 March 2005 the Court decided to communicate the complaints under Articles 6 § 1 and 13 of the Convention, and Article 2 of Protocol No.4 concerning the length of the criminal proceedings against the applicant and the reasonableness and lawfulness of the restriction on the applicant's freedom of movement in the form of an undertaking not to abscond to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1950 and lives in the city of Zhytomyr, Ukraine.

5. On 12 September 1995 the applicant had a quarrel with his neighbours, Mr and Ms L., which led to a fight. The applicant was arrested by the police and brought to the police station.

6. On 13 September 1995 the Zhytomyr District Court fined the applicant 150 000 karbovanets (1.5 UAH)[1] for the administrative offence of swearing in a public place.

7. On 22 September 1995 the Zhytomyr District Police Department instituted criminal proceedings against the applicant upon the complaint of Mr and Ms L. for inflicting medium bodily harm on Mr L.

On 20 December 1995 the police investigator instituted criminal proceedings against the applicant for extremely malicious hooliganism (*особо злостное хулиганство*).

8. On 18 January 1996 the applicant was formally charged with the extremely malicious hooliganism and gave a written undertaking not to abscond.

9. On 7 February 1996 the investigation was completed and the applicant was given access to the case-file.

10. On 20 February 1996 the applicant finished consulting the case-file.

11. On 12 March 1996 the investigation was resumed. The proceedings against the applicant for extremely malicious hooliganism were discontinued. Instead, he was charged with inflicting medium bodily harm.

12. On 14 March 1996 the investigation was completed and the applicant was given access to the case-file. He finished consulting the case-file on the same day.

13. On 19 March 1996 the case was referred to the Zhytomyr District Court.

14. On 30 May 1996 the court ordered a forensic examination and adjourned the hearing.

15. On 16 July 1996 the court ordered an additional forensic examination and adjourned the hearing.

16. On 24 October 1996 the court sentenced the applicant to two years' imprisonment with one year's probation. The court confirmed the obligation not to abscond, i.e. not to leave his place of residence, as a restrictive measure.

17. On 26 November 1996 the Zhytomyr Regional Court upheld the decision of the first instance court.

18. On 6 June 1997 the Presidium of the Zhytomyr Regional Court quashed the decisions of 24 October and 26 November 1996 under the supervisory review procedure and remitted the case for an additional investigation.

19. On 23 June 1998 the General Prosecutor's Office (“the GPO”) closed the criminal case against the applicant and quashed the preventive measure

[1] USD 0.89 or DEM1.35

imposed on him. On 26 August 1998 this decision was quashed and the case was reopened.

20. On 2 October 1998 the case was again closed and the preventive measure was quashed. On 29 October 1998 the decision of 2 October 1998 was quashed. The applicant maintained that in November 1998 he had requested a permission to visit his sick mother in another town in Ukraine, but had been refused. The case was then closed on 10 January 1999, being finally reopened on 13 January 1999. On 11 March 1999 the applicant once again gave his obligation not to leave his place of residence.

21. On 30 October 1999 the case was sent to the Zhytomyr District Court.

22. On 4 November 1999 the court found the case ready for examination and scheduled the hearing for 26 January 2000.

23. On 26 January 2000 the court heard the merits of the case and adjourned the hearing till 20 March 2000.

24. On 20 March 2000 the court postponed the hearing due to the failure of the applicant's lawyer to appear.

25. On 4 April 2000 the court heard the merits of the case and adjourned the hearing till 28 April 2000.

26. On 28 April 2000 the hearing was adjourned following the applicant's request.

27. On 1 June 2000 the court heard the merits of the case and adjourned the hearing till 19 June 2000.

28. On 5 July 2000 the court postponed the hearing till 25 September 2000 due to the failure of the applicant's lawyer to appear.

29. On 25 September 2000 the court postponed the hearing till 27 October 2000 due to the failure of the victim to appear.

30. On 2 October 2000 the applicant requested the court's permission to leave for Moscow till 25 October 2000. The court allowed this request.

31. On 16 November 2000 the court postponed the hearing till 1 December 2000, and on 1 December 2000 the court postponed the hearing till 19 March 2001 due to the failure of the applicant's lawyer to appear.

32. By a ruling of 19 March 2001, the court rejected the applicant's request to close the criminal case against him. The applicant appealed against this ruling, therefore the hearing on his case was adjourned.

33. On 18 April 2001 the Zhytomyr Regional Court rejected the applicant's appeal against the ruling of 19 March 2001 as it could not be appealed separately.

34. The hearing was resumed in the Zhytomyr District Court on 25 July 2001 and adjourned till 1 August 2001.

35. On 19 November 2001 the applicant requested the court not to hear the case in absence of his lawyer.

36. On 10 May 2002 the court heard the merits of the case and adjourned the hearing till 20 June 2002.

37. On 20 June 2002 the court rejected the applicant's request to replace the investigators in his case.

38. On 31 July 2002 the court rejected the applicant's request to replace the judge in his case.

39. On 10 June 2003 the court rejected the applicant's request to terminate the criminal proceedings against him because the administrative offence for which he was found guilty in 1995 was different from the offence for which he was charged under the pending criminal proceedings.

40. On 6 October 2003 the Zhytomyr District Court acquitted the applicant for a lack of evidence.

41. On 23 December 2003 the Zhytomyr Region Court of Appeal quashed the decision of 6 October 2003 and remitted the case for a fresh consideration.

42. On 2 February 2004 the Judge of the Supreme Court of Ukraine rejected the applicant's appeal in cassation against the decision of 23 December 2003 as that decision was not subject to appeal.

43. On 10 February 2004 and 4 March 2004 the hearing was adjourned due to the victim's failure to appear.

44. On 2 April 2004 the President of the Zhytomyr District Court allowed the applicant's request to replace the judge in his case. Judge B. was replaced by Judge Ye.

45. On 15 October 2004 the hearing was adjourned till 20 October 2004 due to the applicant's failure to appear.

46. On 20 October, 28 October and 17 November 2004 the hearing was adjourned due to the victim's failure to appear.

47. The court heard the merits of the case on 13 December, 18 December and 27 December 2004.

48. On 20 January 2005 the applicant challenged the judge in his case.

49. On 25 February 2005 the hearing was adjourned till 17 March 2005 due to the prosecutor's failure to appear.

50. On 17 March 2005 the court heard the merits of the case and adjourned the hearing till 7 April 2005.

51. On 7 April 2005 the applicant challenged the judge in his case.

52. On 28 April and 7 May 2005 the hearing was adjourned due to the prosecutor's failure to appear.

53. On 3 March 2006 the court convicted the applicant of inflicting medium bodily harm and sentenced him to one year's imprisonment. The court exempted the applicant from serving the sentence as the charges against him had become time-barred.

54. On 23 May 2006 the Zhytomir Regional Court of Appeal upheld the judgment with minor changes.

55. The criminal proceedings are still pending before the Supreme Court.

II. RELEVANT DOMESTIC LAW

56. The text of Articles 148, 149 and 150 of the Code of Criminal Procedure of 1960, which are the general rules on preventive measures, is set out in *Merit v. Ukraine* (no. 66561/01, judgment of 30 March 2004).

57. According to Article 151 of the Code, an undertaking not to abscond consists of an obligation by a suspect or an accused not to leave his or her place of residence or temporary stay without the permission of an investigator. In the event of a breach of such a written undertaking, a stricter measure of restraint may be applied.

58. According to Article 48 of the Criminal Code at the material time (Article 49 of the Criminal Code in force as of 1 September 2001), the charges of medium gravity become time-barred after five years from the date of committal.

THE LAW

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

59. The applicant complained that the length of the criminal proceedings against him had been incompatible with the reasonable time requirement, provided in Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

A. Admissibility

60. The Government raised objections regarding exhaustion of domestic remedies similar to those which the Court has already dismissed in the *Merit* case (see, *Merit v. Ukraine*, no. 66561/01, §§ 54-67, 30 March 2004). The Court considers that the present objections must be rejected for the same reasons.

61. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

62. The Court recalls that in assessing the reasonableness of the length of the proceedings in question, it is necessary to have regard to the particular circumstances of the case and the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities, and what was at stake for the applicant (see, for instance, *Kudla v. Poland* [GC], no. 30210/96, § 124, ECHR 2000-XI).

1. Period to be taken into consideration

63. The period to be taken into consideration in the present case began on 22 September 1995 when the criminal proceedings were instituted against the applicant. The proceedings are still pending, thus, for the moment, they have lasted more than eleven years.

64. The Court reiterates that the period to be taken into consideration only began on 11 September 1997, when the recognition by Ukraine of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account may be taken of the state of proceedings at the time (see, among other authorities, *Styranowski v. Poland,* no. 28616/95, § 46, ECHR 1998-VIII and *Baglay v. Ukraine*, no. 22431/02, § 27, 8 November 2005). The Court notes that out of eleven years of the proceedings, over nine years fall within the Court's jurisdiction *ratione temporis.*

2. Complexity of the case

65. The parties did not comment on this issue.

66. The Court notes that the proceedings at issue concerned one episode of inflicting medium bodily injuries. The applicant was the only accused in this case. Even though the court had to order the forensic examination and examine several witnesses, it could not be said that the proceedings were of any particular complexity.

3. Conduct of the applicant

67. According to the Government, the applicant is responsible for periods of delay from 16 March to 23 June 1998 and from18 March to 30 October 1999, when he had been consulting the case-file. The Government further mentioned that the applicant three times requested to

adjourn the hearing, and three times the hearing was adjourned due to the failure of his lawyer to appear. The Government also submitted that the applicant contributed to the length of proceeding by lodging numerous motions and challenging the judges.

68. The applicant disagreed. He maintained that during the above-mentioned periods he had not been consulting the case-file, but because investigators in his case had been repeatedly replaced, the investigative actions had to be re-conducted. Thus, he considered, the above periods of delay were attributed to the authorities. The applicant further argued, that he requested to adjourn the hearing for one day, whereas it remained unclear why the court had fixed the hearings at such long intervals. He finally contended that he would not lodge additional motions or challenge judges if there had not been so serious procedural defects in his case.

69. The Court observes that even if the impugned periods are attributed to the applicant, their overall length of ten months cannot justify the length of nine years. The Court further notes that, whenever hearings were adjourned, the subsequent hearings were scheduled with excessive delays, which must be imputed, at least in part, to the State authorities (see, *Tommaso Palumbo v. Italy*, no. 45264/99, § 19, 26 April 2001). As concerns the applicant's numerous motions, including motions to challenge the judges, the Court recalls that the applicant cannot be blamed for using the avenues available to him under domestic law in order to protect his interests (see, *Silin v. Ukraine*, no. 23926/02, § 29, 13 July 2006). Even assuming that the motions themselves were groundless, they did not contribute considerably to the overall length of the proceedings

70. Given the above considerations, the Court concludes that there is no evidence before the Court to suggest that the applicant contributed in a significant way to their length.

4. What was at stake for the applicant

71. The Court recalls that an accused in criminal proceedings should be entitled to have his case conducted with special diligence and Article 6 is, in criminal matters, designed to avoid that a person charged should remain too long in a state of uncertainty about his fate (see, *Nakhmanovich v. Russia*, no. 55669/00, § 89, 2 March 2006). The Court considers that much was at stake for the applicant as he suffered a feeling of indeterminacy in respect of his future, bearing in mind that he risked imprisonment (see paragraphs 16-17 and 53 above) and was under an obligation not to leave his place of residence.

5. Conduct of the national authorities

72. The Government maintained that no period of delay was attributed to the authorities.

73. The applicant disagreed. He argued that he had been extremely interested in determining his case at the earliest possible date and the authorities were fully responsible for eleven years' examination of the charges against him.

74. The Court notes that the criminal proceedings against the applicant were several times terminated and resumed, which discloses a serious deficiency in the prosecution system (see, *mutatis mutandis*, *Baglay v. Ukraine*, no. 22431/02, § 31, 8 November 2005 and *Stoianova and Nedelcu v. Romania*, nos. 77517/01 and 77722/01, § 20, ECHR 2005-...). Furthermore, the failure of the authorities, following years of investigation, to produce to the court a case ready for trial reveals little diligence on their part. Moreover, the proceedings against the applicant were continued even after the charges against him had become time-barred.

75. The Court further recalls that it is the role of the domestic courts to manage their proceedings so that they are expeditious and effective (see, *Silin v. Ukraine*, cited above, §34). However, in the Court's opinion the national courts did not act with due diligence, having regard to the applicant's situation.

6. Conclusion

76. In sum, having regard to the circumstances of the instant case, the overall duration of the proceedings and their reconsideration on two occasions, the Court considers that the length of the proceedings was excessive and failed to meet the reasonable time requirement.

77. There has accordingly been a violation of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

78. The applicant complained that his complaints about the course of investigation and the delays therein have been to no avail. He relied on Article 13 of the Convention, which provides:

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

79. The Government agreed in their observations that the available remedies in criminal procedure in Ukraine could not be considered effective. However, they argued that it was not necessary to examine this complaint since there was no violation of Article 6 § 1 in this case.

80. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). The Court further refers to its finding in the *Merit* case about the lack of an effective and accessible

remedy under domestic law for complaints in respect of the length of criminal proceedings (see, *Merit v. Ukraine*, cited above, §§ 78-79).

81. The Court concludes, therefore, that there has been a violation of Article 13 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL NO. 4 TO THE CONVENTION

82. The applicant complained about the lengthy restriction on his freedom of movement as a result of the undertaking not to abscond. He relied on Article 2 of Protocol No. 4, which, insofar as relevant reads as follows:

> 1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence....
>
> 3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
>
> 4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

A. Whether there was an interference

83. The Government maintained that the applicant's freedom of movement had not been restricted as he had been able to apply to the court for permission to leave the place of his residence. Such permission, for instance, was given to the applicant from 2 to 20 October 2000. Moreover, in 2002 – 2003 the applicant left Ukraine without any permission, but he had not been punished for that.

84. The applicant disagreed. He recalled that this measure had imposed on him an obligation to report to the judge or investigator each time he wanted to leave his place of residence, and thus had restricted his liberty of movement. He maintained that he had not been able to realise his plans to move to another city in Ukraine, to visit his friends and relatives as often as he wanted, and even to plan his holidays.

85. The Court agrees with the applicant that the impugned measure restricted his right to liberty of movement in a manner amounting to an interference, within the meaning of Article 2 of Protocol No. 4 to the Convention (see *Raimondo v. Italy*, judgment of 22 February 1994, Series A no. 281-A, p. p. 19, § 39). The Court dismisses the Government's argument that the applicant's freedom of movement was not restricted as he was given

the permission to leave and was not sanctioned for unauthorised leave. The Court notes that an obligation to ask each time the authorities a permission to leave does not correspond to sense of the concept "freedom of movement".

B. Whether the interference was justified

86. The interference mentioned in the preceding paragraphs breaches Article 2 of Protocol No. 4 unless it is "in accordance with law", pursues one of the legitimate aims set out in Article 2 §§ 3 and 4 of Protocol No. 4 and is, in addition, necessary in a democratic society to achieve the aim or aims in question (see, *Denizci and Others v. Cyprus*, nos. 25316-25321/94 and 27207/95, § 405, ECHR 2001-V).

1. "In accordance with the law"

87. The Court notes that the parties did not dispute that the application of the obligation not to abscond in the present case was compatible with domestic procedural law. The Court is satisfied that the interference was in accordance with the law (Articles 148-151 of the Code of Criminal Procedure).

2. Legitimate aim

88. The Court recalls that the Convention permits States, in certain circumstances, to apply preventive measures restricting the liberty of an accused in order to ensure the efficient conduct of a criminal prosecution, including a deprivation of liberty. In the Court's view, an obligation not to leave an area of residence could be a proportionate restriction on an accused's liberty (see, *mutatis mutandis*, *Nagy v. Hungary* (dec.), no. 6437/02, 6 July 2004).

89. In the present case the applicant was the subject of criminal proceedings. The Court accordingly finds that the restriction pursued the legitimate aims set out in paragraph 3 of Article 2 of Protocol No. 4, in particular, to ensure of the applicants' presence at the place where the investigation was being conducted and at the court hearings (see, *Fedorov and Fedorova v. Russia*, no. 31008/02, § 37, 13 October 2005).

3. "Necessary in a democratic society"

90. The test of "necessity in a democratic society" requires the Court to determine whether the interference complained of was "proportionate to the legitimate aims pursued" (see, mutatis mutandis, *Kyprianou v. Cyprus* [GC], no. 73797/01, §§ 170-171, ECHR 2005-...). As regards the proportionality of the interference, the Court had particular regard to the duration of the measure in question.

91. The applicant maintained that he had been subjected to an undertaking not to abscond since the beginning of the criminal proceedings in 1995 and until March 2006.

92. The Government disagreed. They mentioned that the applicant had given his undertaking not to abscond in January 1996, and this preventive measure was quashed in June 1998, whereas the application had been submitted in 2002. Thus this first period falls outside the six-month time-limit. The second undertaking not to abscond was given on 11 March 1999 and lasted until 23 May 2006.

93. The Court notes that, according to the applicant's submissions, in November 1998 he unsuccessfully applied to the investigator for a permission to visit his sick mother, who lived in another town. The Court also notes that on 23 June 1998 the criminal proceedings against the applicant were terminated and his undertaking not abscond was quashed. However, this decision never became final and was quashed on 26 August 1998. Moreover, on 2 October 1998 the criminal proceedings were again terminated and the applicant's undertaking not to abscond was yet again quashed – until 29 October 1998. The same repeated on 10 January 1999, when the criminal case against the applicant was closed until 13 January 1999. Therefore, the periods when the applicant was not under the obligation not to leave his place of residence were sixty-four, twenty-seven and three days, respectively. In these circumstances, the Court finds that it would appear artificial to split the total period of the restrictive measure into several parts for the purpose of the Convention proceedings.

94. The Court, therefore, considers that the undertaking not to abscond was imposed on the applicant for a period of approximately ten years and four months, out of which eight years and eight months fall within the Court's competence *ratione temporis*.

95. The Court ruled on the compatibility with Article 2 of Protocol No. 4 of an obligation not to leave one's place of residence in a series of cases against Italy, including the case of *Luordo* (see *Luordo v. Italy*, no. 32190/96, § 96, ECHR 2003-IX). In this case the Court found such an obligation, imposed on the applicant for the duration of bankruptcy proceedings, disproportionate because of their length, in that case fourteen years and eight months, even though there had been no indication that the applicant had wished to leave his place of residence or that such permission had ever been refused. However, in the *Antonenkov and Others* case (see, *Antonenkov and Others v. Ukraine*, no. 14183/02, §§ 59-67, 22 November 2005), where the length of the impugned restriction within the course of criminal proceedings was four years and ten months, the Court found no violation of Article 2 of Protocol No. 4. Also, in the *Fedorov and Fedorova* case (see, *Fedorov and Fedorova v. Russia*, cited above, §§ 32-47), where the obligation not to leave one's place of residence was imposed on the applicants during four years and three months and four years and six

months, the Court found that in the circumstances of the case the restriction on the applicants' freedom of movement was not disproportionate.

96. In the Court's view, the present case should be distinguished from the *Antonenkov and Others* and *Fedorov and Fedorova* cases. The Court firstly notes that the length of the restriction in the present case was significantly longer than in the two aforementioned cases, and its mere duration could be sufficient to conclude that it was disproportionate. The Court further puts emphasis on the facts that the lengthy interference occurred in the context of prosecuting a medium grave offence and that the charges against the applicant had become time-barred already in September 2000 (see paragraph 58 above), whereas the restriction was imposed on him until May 2006.

97. In view of the above considerations, the Court reaches the conclusion that a fair balance between the demands of the general interest and the applicant's rights was not achieved. Accordingly, there has been a violation of Article 2 of Protocol No. 4 to the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 4 OF PROTOCOL NO. 7 TO THE CONVENTION

98. The applicant further complained that that he was found guilty of an administrative offence and then charged with the same offence under the criminal law.

99. The Court notes that, as it appears from the case-file, even though the administrative and criminal proceedings relate to the applicant's actions on the same day, they refer to different events, namely the swearing and inflicting bodily harm. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

100. 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

101. The applicant claimed 480,000 euros (EUR) in respect of pecuniary damage and loss of income, and EUR 1,200,000 in respect of non-pecuniary damage.

102. The Government contended that the applicant's claim was exorbitant and unsubstantiated and that he failed to furnish any evidence in support of this claim. However, they left the question of costs and expenses to the Court's discretion.

103. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. However, the Court considers that the applicant must have sustained non-pecuniary damage as regards the length of the criminal proceedings against him and imposed obligation not to leave his place of residence. The Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant the sum of EUR 4,800 in respect of non-pecuniary damage.

B. Costs and expenses

104. The applicant did not submit any claim under this head within the set time-limit; the Court therefore makes no award in this respect.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Articles 6 § 1 and 13 of the Convention and Article 2 of Protocol No. 4 to the Convention admissible and the remainder of the application inadmissible;

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

3. *Holds* that there has been a violation of Article 13 of the Convention;

4. *Holds* that there has been a violation of Article 2 of Protocol No. 4 to the Convention;

5. *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, EUR 4,800 (four thousand eight hundred euros) in respect of non-pecuniary damage to be converted into

the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(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;

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

Done in English, and notified in writing on 7 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President