



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

FIFTH SECTION

CASE OF M.A. v. SLOVENIA

(Application no. 3400/07)

JUDGMENT

STRASBOURG

15 January 2015

FINAL

15/04/2015

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

In the case of M.A. v. Slovenia,

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

Mark Villiger, *President*,

Angelika Nußberger,

Boštjan M. Zupančič,

Ganna Yudkivska,

André Potocki,

Helena Jäderblom,

Aleš Pejchal, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 9 December 2014,

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

PROCEDURE

1. The case originated in an application (no. 3400/07) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Slovenian national, Ms M.A. (“the applicant”), on 27 December 2006. The President of the Section acceded to the applicant’s request not to have her name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Mr J. Majer, a lawyer practising in Maribor. The Slovenian Government (“the Government”) were represented by their Agent, Mrs B. Jovin Hrastnik.

3. The applicant alleged that the trial concerning her rape had been unduly long and had not been conducted with the required diligence.

4. On 5 June 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962 and lives in Maribor.

6. On the evening of 3 November 1983, the applicant, who was eight months pregnant and was returning home from work, was attacked by three men, A.M., T.D. and N.T. They pulled her into a car, drove to a remote location and raped her one after the other.

7. Immediately after the incident, the applicant went to the Maribor Police. The police arrested the three men at around midnight. They remained in custody following an investigating judge's order. They were released from custody on 24 November 1983. The applicant was taken to the Maribor Hospital to be medically examined.

8. On 5 November 1983 the police lodged a criminal complaint against A.M., T.D. and N.T. accusing them of rape. Three days later, the Maribor District Public Prosecutor asked the investigating judge of the Maribor Basic Court to open an investigation.

9. During the investigation, three reports concerning the examination of the crime scene were prepared, and the three accused men and witnesses were heard by the investigating judge. T.D. and N.T. admitted to having had sex with the applicant, but denied that any force had been used. A.M. denied having had sex with the applicant.

10. On 13 March 1984 A.M., T.D. and N.T. were charged with aggravated rape under section 100 § 2 of the Penal Code of the Republic of Slovenia. The proceedings that followed were conducted in secrecy in order to protect the private lives of those involved.

11. The first trial hearing was scheduled for August 1988. However, it was adjourned due to the absence of A.M. and N.T. Another hearing to be held on 24 February 1989 was adjourned because it had proved impossible to serve a court order on N.T. In this connection, the Government pointed out that all three men had been born outside the territory of Slovenia and were Roma. At the time of the incident, two of them (A.M. and T.D.) resided in Slovenia, while the third (N.T.) resided in another part of what was then Yugoslavia.

12. On 14 December 1989, an order for detention pending trial was issued against N.T. because he was considered to pose a flight risk. However, he could not be found and went missing. Therefore, an arrest warrant was issued against him on 25 April 1990, which could not, however, be executed. In May 1995, the court conducted inquiries as to the whereabouts of all three defendants and established the places of residence of A.M. and T.D., but not that of N.T. A hearing on 13 October 1995 was adjourned due to the absence of A.M.'s defence counsel. As his whereabouts could not be established, on 26 October 1995 the charges against N.T. were severed into a separate case.

13. N.T. could not be found and brought to trial in the following years, so an international arrest warrant was issued against him in 2004. However, his whereabouts remained unknown and the charges against him were dropped on 1 October 2008. The international arrest warrant was revoked on 29 September 2010.

14. The main hearing in the case against A.M. and T.D. began on 18 November 1996 and continued on 27 and 30 March 1998, 29 April 1998 and 5 June 1999. Thirty-one other hearings were scheduled between

29 November 1995 and 4 March 2002, though they were all postponed, mainly due to the absence of the defendants or of their counsel. From 2000 onwards, a number of steps were taken in order to ensure the presence at trial of T.D., who had apparently been absent from Slovenia for some time. At the end of 2000, the presiding judge proposed that he be placed in detention to prevent him failing to appear at court for hearings, but the extrajudicial panel rejected this proposal, ordering that less severe measures, such as bringing him to hearings by force, should be envisaged first.

15. On 7 July 2003 T.D., who was then fifty years old, died. On 16 January 2004 the part of the case concerning the charges against him was severed from the ongoing proceedings.

16. The Maribor District Court held hearings on 26 May 2004 and on 3 November 2004. The court, amongst other things, heard A.M., the applicant, her husband and five other witnesses, read out the statements given by T.D. and N.T. earlier in the proceedings, and looked into the applicant's medical reports, the record of the examination of the scene of the crime, the record of the examination of A.M.'s car and a variety of other documents.

17. On 3 November 2004 the court issued a judgment finding A.M. guilty of the criminal offence of aggravated rape. He was sentenced to two-and-a-half years in prison. When setting the sentence, which was below the minimum three-year sentence prescribed by law, the court referred to the significant lapse of time from the commission of the crime. It noted that the reasons for the delays in the proceedings had been predominantly caused by the behaviour of T.D. and N.T.

18. Following an appeal by A.M., on 10 November 2006 the Maribor Higher Court quashed the judgment and remitted the case for re-examination. It instructed the Maribor District Court to examine whether A.M. had committed the criminal offence in question or had only attempted to commit it, and whether he had previously known the applicant, which might have raised doubts as to her credibility.

19. On 24 April, 15 June, 14 September, 19 October and 6 November 2007, the court held hearings at which it heard the applicant and a number of witnesses. On the last of those dates, the Maribor District Court issued a judgment finding A.M. guilty of aggravated rape under section 100 § 2 of the Penal Code of the Republic of Slovenia. It sentenced him to two-and-a-half years in prison, referring to the extreme amount of time that had passed since the commission of the offence.

20. Following a further appeal by A.M., on 10 July 2008 the Maribor Higher Court further reduced his sentence to one year in prison, referring to the passage of time, A.M.'s young age (namely 21) at the time of the event, the fact that he had not been later convicted of any other criminal offence, his deteriorating health and the fact that he had a minor child. It upheld the remainder of the Maribor District Court's judgment.

21. A.M. submitted an appeal on points of law (a request for the protection of legality), which was rejected by the Supreme Court on 3 September 2009.

22. Meanwhile, on 28 July 2009 the applicant had instituted civil proceedings against A.M. seeking damages in the amount of 50,000 euros (EUR) for non-pecuniary damage suffered as result of the rape which had been established by the final criminal judgment.

23. On 31 March 2010 the court issued a default judgment. On 18 May 2010 A.M. appealed, arguing that he had not been duly summoned to appear. A hearing was held on 6 September 2010. On 23 December 2010 the court granted reinstatement and summoned the parties to appear at a hearing on 31 March 2011. However, this hearing was adjourned until 24 May 2011 at the request of the defendant's counsel. On that date the parties reached a court settlement by which A.M. was to pay EUR 15,000 (by means of a number of instalments) to the applicant. The civil case was consequently concluded. The applicant alleged that she has not received any compensation to date.

II. RELEVANT DOMESTIC LAW

A. Applicable criminal law

24. At the time of the incident, the applicable criminal law was the 1977 Criminal Code of the Socialist Republic of Slovenia. Article 100 of this Code, which defined the criminal offence of rape and was used in the proceedings at issue, stipulated that this offence was to be punishable by a minimum sentence of three years' imprisonment.

25. Article 286 § 2 of the Criminal Procedure Act provides that the presiding judge shall schedule a first trial hearing within two months of the receipt of the indictment. If he fails to do so, he must inform the president of the court thereof, and the latter is required to take the necessary steps to schedule the hearing. A provision to this effect was also included in the previously applicable Criminal Procedure Act 1977.

B. Applicable civil law

26. Article 148 of the Code of Obligations regulating the liability of legal persons for damage inflicted by one of its subsidiary bodies, which also applies to the determination of the State's liability for damages, provides that a legal person is liable for damage inflicted on a third person by one of its subsidiary bodies in the exercise of its functions or in connection therewith.

27. According to Article 179 of the Code of Obligations, which constitutes the statutory basis for awarding compensation for non-pecuniary damage, such compensation may be awarded, *inter alia*, in the event of the infringement of a person's personality rights, provided that the circumstances of the case, and in particular the level and duration of the distress and fear caused thereby, justify the award.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 8 OF THE CONVENTION

28. The applicant complained under Articles 3 and 8 of the Convention that by protracting the criminal proceedings against her alleged rapists for twenty-five years, the respondent State had failed to provide an effective system of prosecution and trial of the criminal offence committed against her. She also relied on Articles 6 § 1 and 13 of the Convention, alleging that her right to trial within a reasonable time had been violated in these proceedings.

29. The Government contested that argument.

30. Considering that the focus of the applicant's complaint was the domestic authorities' lack of promptness in conducting the criminal proceedings concerning sexual offences committed against her, the Court considers that her complaint falls to be examined under Articles 3 and 8 of the Convention, which, in so far as relevant, read as follows:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 8 § 1

"Everyone has the right to respect for his private ... life ..."

A. Admissibility

1. *Inadmissibility* *ratione temporis*

31. The Government highlighted that Slovenia had ratified the Convention on 28 June 1994 and that a considerable number of the procedural steps taken concerning the criminal trial at issue had occurred before the critical date. Moreover, the incident had taken place many years before that date. In the Government's opinion, the criterion of genuine connection between the event at issue and the entry into force of the

Convention was rather loose; however, they refrained from taking a position on whether these procedural steps excluded the present case from the Court's temporal jurisdiction. The Government did, however, point out that the Convention was not binding on Slovenia with regard to acts or facts which had occurred or which were related to a situation which had ceased to exist before 28 June 1994.

32. The Court reiterates that its jurisdiction *ratione temporis* covers only the period after the date of ratification of the Convention and its Protocols by the respondent State. After ratification, the State's acts must conform to the Convention or its Protocols and subsequent facts fall within the Court's jurisdiction even where they are merely extensions of an already existing situation (see, for example, *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, nos. 29813/96 and 30229/96, § 43, ECHR 2000-I).

33. With regard to the procedural obligations incumbent on the States, the Court observes that they have been implied in varying contexts under the Convention (see, for example, *B. v. the United Kingdom*, 8 July 1987, § 63, Series A no. 121; *M.C. v. Bulgaria*, no. 39272/98, §§ 148-153, ECHR 2003-XII; and *Cyprus v. Turkey* [GC], no. 25781/94, § 147, ECHR 2001-IV) where this has been perceived as necessary to ensure that the rights guaranteed under the Convention are not theoretical or illusory, but practical and effective (*İlhan v. Turkey* [GC], no. 22277/93, § 91, ECHR 2000-VII). In particular, the Court has interpreted Articles 2 and 3 of the Convention, having regard to the fundamental character of these rights, as containing a procedural obligation to carry out an effective investigation into alleged breaches of the substantive limb of these provisions (*Ergi v. Turkey*, 28 July 1998, § 82, *Reports of Judgments and Decisions* 1998-IV; *Mastromatteo v. Italy* [GC], no. 37703/97, § 89, ECHR 2002-VIII; *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 101-06, *Reports* 1998-VIII; and *Šilih v. Slovenia* [GC], no. 71463/01, § 153, ECHR 2009).

34. Moreover, the Court has already held that the procedural obligation to carry out an effective and prompt investigation under Article 2 has evolved into a separate and autonomous duty capable of binding the State, even when the substantive act took place before the critical date (see *Šilih*, cited above, § 159, and more recently, *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, §§ 141-150, 21 October 2013). For such a procedural obligation to come into effect, a significant proportion of the investigating steps required by this provision will have been or ought to have been taken after the critical date (see *Janowiec and Others*, § 142). The Court has also applied this principle to cases concerning deaths at the hands of private individuals (see *Lyubov Efimenko v. Ukraine*, no. 75726/01, § 63, 25 November 2010, and *Franeş v. Romania* (dec.) no. 35802/05, 17 May 2011). Finally, in *Tuna v. Turkey* (no. 22339/03, § 58, 19 January 2010) and in *Stanimirović v. Serbia* (no. 26088/06, § 28,

18 October 2011), it held that the principles established in *Šilih* similarly applied to the procedural obligation to investigate under Article 3.

35. In the present case, the Court observes that the applicant's complaint of failure to comply with the procedural obligations arising from Article 3 essentially concerns the allegedly excessive duration of the criminal trial for rape against A.M., T.D. and N.T., concerning a rape which took place in 1983, some eleven years before the Convention became operational in respect of Slovenia on 28 June 1994. However, it took the national authorities another fifteen years after the ratification of the Convention to conduct the trial, in which the hearings had not even begun until the entry into force of the Convention. A significant proportion of the proceedings covering a lengthy period of time therefore took place after the critical date. Moreover, the applicant's complaints about the State's failure to conduct an effective and prompt trial pertain to a large extent to this period. In view of this, the Court finds that the alleged procedural violation of Article 3 falls within its temporal jurisdiction and that it is therefore competent to examine this part of the application in so far as they occurred after 28 June 1994.

36. However, as regards the Court's jurisdiction *ratione temporis* under Article 8 of the Convention, it is noted that in cases such as the present one, where the applicant's complaints are limited to the effectiveness of the investigation and/or trial and Article 3 provides a sufficient legal basis for the State's duty to conduct such an investigation and/or trial of a serious offence against the individual's physical integrity, the Court has already held that it is not necessary to decide whether its temporal jurisdiction also extends to issues under Article 8 (see *P.M. v. Bulgaria*, no. 49669/07, § 58, 24 January 2012). The Court will therefore confine itself to determining whether the events complained of constituted a breach of the procedural aspect of Article 3 of the Convention.

2. The Government's objection of non-exhaustion of domestic remedies

37. The Government objected that the applicant had failed to exhaust domestic remedies, as she had not introduced an action against the State for compensation of non-pecuniary damage caused by the State authorities based on Articles 148 and 179 of the Code of Obligations. According to the Government, any unlawful conduct on the part of the authorities might constitute a violation of an individual's personality rights. In support of their submissions, they cited eight decisions of the Supreme Court adopted between 1998 and 2009 and three decisions of the Ljubljana Higher Court of 2010 and 2011 showing that unlawful "infringement of personality rights" had been found by the domestic courts to cause mental distress warranting compensation. Moreover, the Government submitted eleven decisions of the Supreme Court, the Ljubljana Higher Court and the Maribor Higher Court, respectively, in which a wide range of rights, such as the rights to personal dignity, to physical and mental integrity, to a healthy

living environment, to personal liberty, to respect for the deceased and to the inviolability of the home had been considered as “personality rights”.

38. The applicant challenged the Government’s arguments, observing that her application to the Court had been sent by post on 27 December 2006 “when there was no obligation to exhaust all domestic remedies”.

39. The Court notes that the Government has raised a similar objection regarding the availability of a civil action for compensation already in *W. v. Slovenia* (no. 24125/06, §§ 75-77, 23 January 2014). In that case, the Court found that all of the domestic decisions advanced by the Government related to substantive rights and not to the rights arising from the State’s positive obligation to conduct an effective investigation and criminal proceedings. Thus, it held that the action for compensation had not offered the applicant reasonable prospects of success and rejected the Government’s objection. Considering that in the present case the Government submitted no domestic jurisprudence refuting this conclusion, the Court sees no reason to depart from the conclusion reached in *W. v. Slovenia*.

40. It follows that the Government’s objection of non-exhaustion of domestic remedies should be dismissed.

3. Conclusion

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

B. Merits

1. Arguments of the parties

(a) The applicant

42. The applicant noted that twenty-five years could not be considered a “normal” duration for criminal proceedings. In her opinion, the inactivity of the national authorities resulted in an outcome where one of the alleged rapists died in 2003 without being convicted and another had disappeared. She also pointed out that at the time of the rape she had been eight months pregnant. Finally, she contended that she had been subject to mockery and derision as a consequence of her rape and that she still suffered from nightmares and uncontrollable fits and had to take medication to overcome these symptoms.

(b) The Government

43. The Government first observed that the applicant had only relied upon Articles 6 § 1 and 13 of the Convention in relation to the allegedly

excessive duration of the criminal trial. However, the Court had requested that the Government also provide observations on the compliance of the criminal trial with the obligation to conduct an effective investigation arising from Articles 3 and 8 of the Convention. In the light of the applicant's allegations, the Government considered that they would address the question of the effectiveness of the investigation from the viewpoint of the duration of the proceedings.

44. The investigation phase had been conducted with due diligence, as an indictment had been filed four months after the incident. However, the case had not been afforded priority, as the defendants had been released from custody. As regards the duration of the trial, it had mainly been affected by the need to ensure N.T.'s presence at trial. Numerous inquiries had been conducted in order to establish his place of residence and/or employment and detention orders and arrest warrants had been issued in his respect. However, as N.T. had emigrated from Slovenia, these attempts had proved unsuccessful and his case had been severed from that of the other accused. Moreover, several of the thirty-one hearings scheduled between October 1995 and May 2004 had had to be adjourned due to the absence of A.M. and T.D. or their defence counsel, while some of them had been rescheduled owing to the absences of the public prosecutor, judge or interpreters. Furthermore, T.D., who had initially accepted the use of the Serbian language in the proceedings, had later requested the presence of a Romani interpreter. However, Romani interpreters had not been included in the list of court interpreters at the time, and it had only been at the court's request that on 13 February 1998 the Ministry of Justice had submitted a list of four people who spoke the Romani language. T.D. had later claimed that he could not understand one of the interpreters provided for him by the court.

45. In the light of the above, the Government argued that the court had continuously tried to conduct the trial within a reasonable time. However, a number of circumstances which had been impossible to prevent or avoid had affected the course of the proceedings. After a judgment had been given at first instance the proceedings had been conducted without lengthy delays: two years had passed between the trial judgment and the appellate ruling, and one year later a second trial judgment had been given. Proceedings at the third level of jurisdiction had been concluded within a year.

2. The Court's assessment

46. The relevant principles concerning the State's obligation inherent in Article 3 of the Convention to investigate cases of ill-treatment, and in particular sexual abuse committed by private individuals, are set out in *M.C. v. Bulgaria* (cited above, §§ 149, 151 and 153).

47. As regards the Convention requirements relating to the effectiveness of an investigation, the Court has held that any investigation should in

principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible for an offence. This is not an obligation of result, but one of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, such as by taking witness statements and gathering forensic evidence, and a requirement of promptness and reasonable expedition is implicit in this context (see *Denis Vasilyev v. Russia*, no. 32704/04, § 100, 17 December 2009, with further references). The promptness of the authorities' reaction to the complaints is an important factor (see *Labita v. Italy* [GC], no. 26772/95, §§ 133 et seq., ECHR 2000-IV). Consideration has been given in the Court's judgments to matters such as the time taken to open investigations, delays in identifying witnesses or taking statements (see *Mătăsarū and Saviṭchi v. Moldova*, nos. 38281/08, §§ 88 and 93, 2 November 2010), the length of time taken for the initial investigation (see *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001), and unjustified protraction of the criminal proceedings resulting in the expiry of the statute of limitations (see *Angelova and Iliev v. Bulgaria*, no. 55523/00, §§ 101-103, 26 July 2007, and *P.M. v. Bulgaria*, cited above, § 66).

48. Moreover, in so far as the investigation leads to charges being brought before the national courts, the procedural obligations under Article 3 of the Convention extend to the trial stage of the proceedings. In such cases the proceedings as a whole, including the trial stage, must satisfy the requirements of the prohibition of ill-treatment (see *Okkalı v. Turkey*, no. 52067/99, § 65, ECHR 2006-XII (extracts), and *Çelik v. Turkey* (no. 2), no. 39326/02, § 34, 27 May 2010). In this respect, the Court has already held that the protection mechanisms available under domestic law should operate in practice in a manner allowing for the examination of the merits of a particular case within a reasonable time (see *Ebcin v. Turkey*, no. 19506/05, § 40, 1 February 2011, with further references).

49. Turning to the present case, the Court is confronted with an inordinate case as regards the dilatory manner in which the domestic authorities dealt with a serious crime. It is noted that the applicant's complaint was focused on the trial stage of the criminal proceedings concerning the rape committed against her in November 1983. The charges against the three defendants were brought in 1984, ten years before the Convention became operational for Slovenia, however the main hearing did not commence until 18 November 1996 (see paragraph 14 above), a year after the case against N.T. – who had apparently left Slovenia years before and could not be traced – was severed from that of the other two defendants (see paragraph 12 above). Following T.D.'s death in 2003, A.M. was convicted of aggravated rape on 3 November 2004 (see paragraph 17 above). The judgment having been quashed on appeal, he was again convicted on retrial (see paragraph 19 above). His subsequent appeal was

allowed with regard to the sentence only, and the higher court's judgment was eventually confirmed by the Supreme Court on 3 September 2009 (see paragraph 21 above).

50. Having regard to the above course of proceedings, the Court notes that the criminal trial concerning the applicant's rape was concluded some twenty-six years after the commission of the crime, of which fifteen elapsed after the Convention became operational in respect of Slovenia. Admittedly, the absence of an accused may entail the adjournment of a hearing and therefore some delay in the conduct of the trial. However, the Court has already held that considerable delays in the conduct of criminal proceedings may adversely affect their effectiveness to the detriment of both the defendants and victims, regardless of their outcome (see *Ebcin*, cited above, § 56). In this regard, adjournments and intervals of total inactivity between hearings appear to have been turned into a "*modus operandi*" for dealing with the applicant's case. While it is true that considerable difficulties were encountered by the district court in attempting to secure the defendants' presence, only a very few measures were envisaged beyond conducting inquiries into the defendants' places of residence, and even those steps taken did not prove effective. The proposal to place T.D. in detention pending trial for failing to appear at court was rejected, while an international arrest warrant was only issued in respect of N.T. in 2004 (paragraph 14 above), although he had not resided in Slovenia already at the time of the incident and could not be located since 1989. The authorities' inaction therefore led to delays which can only be described as manifestly excessive; moreover, little interest was shown in finding N.T. and bringing him to justice.

51. Having regard to the foregoing, the Court cannot consider that the State acted with the necessary diligence in conducting the criminal proceedings concerning the applicant's rape. The domestic authorities have therefore failed to comply with their positive obligations under Article 3 of the Convention.

52. It follows that there has been a violation of the procedural aspect of this provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage. She alleged that as a consequence of post-traumatic distress due to the rape she had been suffering from fear, anxiety and distrust. Her attitude towards sexuality had been impaired, she had been suffering from breast cancer and she had had to undergo psychiatric therapy. She considered that the prejudice suffered was comparable to very severe physical damage with permanent consequences.

55. The Government submitted that they could not be held responsible for the criminal actions of private individuals and that their alleged responsibility only covered their procedural obligations under Articles 3 and 8 of the Convention. The applicant had only claimed to have suffered damage linked with the actual commission of the rape, which had formed the object of the civil proceedings she had instituted at the domestic level and which had been concluded with a settlement. Finally, it had not been proven that the applicant's cancer had been provoked by the rape or by the alleged shortcomings in the criminal trial.

56. The Court considers that the applicant must have sustained non-pecuniary damage as a result of the breach of her rights found in the case. Taking into account all the circumstances, and deciding on an equitable basis, the Court awards the applicant EUR 16,000 in respect of non-pecuniary damage.

B. Costs and expenses

57. The applicant also claimed EUR 1,011.31 for costs and expenses incurred before the Court.

58. The Government observed that the applicant's claim did not contain specification of the costs incurred. Under these circumstances, the Government were of the opinion that no award should be made under this head.

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 sought by the applicant (EUR 1,011.31) for the proceedings before it.

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 the procedural limb of Article 3 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:
 - (i) EUR 16,000 (sixteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,011.31 (one thousand and eleven euros and thirty-one cents), 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 15 January 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President