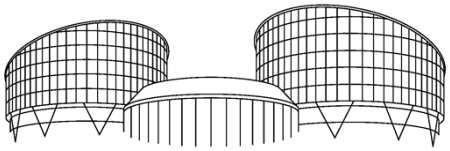

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF GUSEV v. UKRAINE

(Application no. 25531/12)

JUDGMENT

Art 6 § 1 (civil) • Fair hearing and adversarial trial • Requalification of the applicant's claim by the Court of Appeal • No clear reasons for requalification and no subsequent opportunity for applicant to submit evidence and relevant arguments
Art 1 P1 • Peaceful enjoyment of possessions • Applicant entitled to request a rehearing under domestic law in light of the Court's finding under Art 6 § 1 • No need to separately examine the complaint

STRASBOURG

14 January 2021

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 Gusev v. Ukraine,

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

Síofra O'Leary, *President,*
Ganna Yudkivska,
Jovan Ilievski,
Lado Chanturia,
Ivana Jelić,
Arnfinn Bårdsen,
Mattias Guyomar, *judges,*
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 25531/12) 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 Mykola Vasylyovych Gusev ("the applicant"), on 10 October 2011;

the decision to give notice to the Ukrainian Government ("the Government") of the applicant's complaints under Article 6 § 1 of the Convention relating to the length and unfairness and of the proceedings in his case and under Article 1 of Protocol No. 1;

the parties' observations;

Having deliberated in private on 1 December 2020,

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

INTRODUCTION

1. The case concerns the applicant's complaints under Article 6 § 1 of the Convention about the length and unfairness of the civil proceedings in his case and his related complaint under Article 1 of Protocol No. 1.

THE FACTS

2. The applicant was born in 1945 and lives in Kremenchuk. He was represented by Ms Y. Gusyeva, a lawyer practising in Dnipro.

3. The Government were represented by their Agent, Mr I. Lishchyna.

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

5. In July 1998 four individuals kidnapped the applicant's son. After they demanded from the applicant a ransom in the amount of 350,000 United States dollars (USD), he sought assistance from the local police. The police officers invited him to find the money himself and assured him that at the moment that he gave the money to the kidnappers they would arrest them and return the money to him. Having managed to find only USD 287,000 from various sources, the applicant gave the money to the police, who made an

inventory of it and returned it to the applicant, who was then to give it to the kidnappers under the surveillance of the police. The applicant also provided three cars and two helicopters to be used during the police operation.

6. On 11 July 1998, on the kidnappers' instructions, the applicant took a train. He was accompanied by eight police officers. At a place appointed by the kidnappers, and with police approval, he threw out from the train a bag containing the money. The police operation to arrest the kidnappers failed, and the kidnappers took the bag (which contained USD 277,000 – another USD 10,000 had fallen out of the bag when it had been thrown from the train; this money was subsequently collected by the police and returned to the applicant), hid it in another place in the same area and ran away. A few days later, they came back to the hiding place and took the money, which they subsequently spent. On 15 July1998 they set free the applicant's son.

7. In 2002 the kidnappers were arrested and, by a judgment of the Avtozavodskyy District Court of Kremenchuk ("the District Court") of 26 April 2004, convicted and sentenced to varying terms of imprisonment. The District Court found, *inter alia*, that the applicant had collected the ransom money at the proposal of the police and had thrown it out from the train with the approval of the policemen accompanying him. However, the kidnappers had, during the transfer by the applicant of the money to them, taken advantage of the negligently and imprecisely planned police operation to arrest them and of the police officers' uncoordinated actions during that operation, taken possession of the applicant's money, hidden it, and run away. A claim for damages lodged by the applicant against the police and the State Treasury was rejected, the court stating that the police were neither accused nor civil defendants in the criminal proceedings and that the applicant could lodge a claim within separate civil proceedings. A claim for damages lodged by the applicant against the kidnappers was also rejected, owing to the applicant's failure to lodge it in accordance with the procedural requirements.

8. On 3 December 2004 the Poltava Regional Court of Appeal ("the Court of Appeal") upheld that judgment.

9. In March 2005 the applicant lodged a civil claim with the District Court against the police and the State Treasury, seeking compensation for the damage caused to him as a result of the mistakes made by the police in the organisation and conduct of the operation to arrest the kidnappers, owing to which they had run away with his money.

10. In the course of the proceedings the applicant's claim was partly allowed several times, including twice by the Court of Appeal, which based its decision on Article 440 of the 1963 Civil Code (providing that damage caused to a person or to his or her property was to be compensated for in full by the person who had caused it, unless otherwise provided for by law). However, the relevant court decisions were then quashed and the case remitted for reconsideration, as the courts disagreed on whether the case had to be examined under civil or administrative law provisions. Eventually, on

22 June 2010 the appellate administrative court ruled that the case had to be examined according to civil law provisions.

11. Following that, on 17 November 2010 the District Court allowed the claim. With reference to the judgment of 26 April 2004 it found it established that, as a result of the negligently and imprecisely planned police operation to arrest the kidnappers and of the uncoordinated actions of the policemen, the kidnappers had taken possession of the applicant's money. Having first given the money to the police and then, on their instructions, to the kidnappers, the applicant had had a right to expect that the police would protect his property. However, given the fact that the police operation – the aim of which was the arrest of the kidnappers (rather than giving the money to them) – had failed through the fault of the police, the applicant was entitled to claim from the State compensation for damage, because had the police operation been successful, the money would have remained in his possession. Moreover, under domestic law, the duty to find money for the operation to search for and arrest the perpetrators had lain with the police.

12. The court also stated that the respondents had not rebutted the arguments regarding their responsibility for the failure of the operation to arrest the kidnappers and for the preservation of the applicant's money. It referred to Article 440 of the 1963 Civil Code and to a similar provision of the 2003 Civil Code (Article 1166), under which damage caused to a person's property by unlawful decisions, actions or omissions had to be compensated for in full by the person who had caused it. It also stated that under Article 1167 of the 2003 Civil Code the applicant was entitled to receive compensation for non-pecuniary damage caused to him. Lastly, the court referred to Article 56 of the Constitution concerning the right to compensation for damage caused by the State or local authorities or their officials (see paragraph 16 below).

13. The court thus concluded that the applicant had proved that the police had displayed inaction and unprofessionalism during the preparation and conduct of the operation to arrest the kidnappers and to retain his money. Therefore, he was entitled to compensation from the State for the damage suffered; the court accordingly awarded him 2,198,188.90 Ukrainian hryvnias (UAH) (the equivalent of USD 277,000 at the time in question) in compensation for the pecuniary damage that the applicant had suffered and UAH 150,000 (equivalent to USD 13,886) for the non-pecuniary damage suffered, to be paid by the State Treasury.

14. On 21 February 2011, following an appeal by the respondents, the Court of Appeal upheld the factual findings of the District Court, adding that it had been established and not denied by the parties that the police had assured the applicant that during the police operation the kidnappers would be arrested and the money returned to him, and that the kidnappers – who had managed to run away with the money – had subsequently spent it. It also referred to Article 440 of the 1963 Civil Code and, furthermore, to

Article 1177 § 1 of the 2003 Civil Code, which at the material time provided that damage caused to a person's property as a result of a crime was to be compensated for by the State if the person who committed it was not identified or was insolvent. It then held that the District Court had not taken into account the fact that the persons who had taken possession of the applicant's money had been identified, that their insolvency had not been proved and that the causal link between the actions of the police officers and the damage caused by the perpetrators had therefore been absent. Accordingly, it concluded that the District Court had groundlessly allowed the applicant's claim; for that reason it quashed the judgment of 17 November 2010 and rejected the claim.

15. Following a cassation appeal by the applicant (the parties did not provide its copy), in a summary ruling of 25 July 2011 the Higher Specialised Civil and Criminal Court of Ukraine upheld the judgment of 21 February 2011. The court noted, in particular, that the applicant had asked it to quash the judgment of 21 February 2011 and to uphold the judgment of 17 November 2010, arguing that the Court of Appeal had breached the procedural law and wrongly applied the substantive law. However, in the court's view, the applicant's arguments had not proved that and had not rebutted the appellate court's conclusions.

RELEVANT LEGAL FRAMEWORK

16. Article 56 of the Constitution (1996) provides that everyone has the right to compensation, at the expense of the State or bodies of local self-government, for damage caused by unlawful decisions, actions or omissions of the State and local authorities, their officials and officers during the exercise of their powers.

17. Article 440 of the Civil Code (1963) provided, *inter alia*, that damage caused to a person or his or her property was to be compensated for by the person who had caused it, unless otherwise provided for by law.

18. Article 1166 of the Civil Code (2003) provides, *inter alia*, that damage caused by unlawful decisions, actions or omissions in respect of a person's property must be compensated for in full by the person who caused it.

Article 1167 of the Code provides, *inter alia*, that non-pecuniary damage caused to a person by illegal decisions, activity or inactivity must be compensated for by the person who caused it.

Article 1177 § 1 of the Code provided at the material time that pecuniary damage caused to the property of a person as the result of a crime was to be compensated for by the State if the person who had committed the crime was not identified or was insolvent. Article 1177 § 2 further provided that the conditions and procedure governing compensation for pecuniary damage caused to the property of a person who was the victim of a crime was to be established by law.

19. Article 423 of the Code of Civil Procedure (2004) provides that court decisions, orders or rulings, which put an end to a case and entered into force, may be reviewed in exceptional circumstances, including following a finding by an international judicial authority, whose jurisdiction has been recognised by Ukraine, that Ukraine had violated its international obligations on account of the decision, order or ruling at issue.

THE LAW

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

20. The applicant complained, expressly or in substance, under Article 6 § 1 of the Convention of the excessive length and unfairness of the civil proceedings in his case. Article 6 § 1 reads, insofar as relevant, as follows:

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

A. Fairness of the proceedings

1. The parties' submissions

21. The Government submitted that the District Court had applied Articles 1166 and 1167 of the Civil Code mistakenly, given that no unlawful decisions, actions or omissions on the part of the policemen had been established. By its judgment of 21 February 2011 the Court of Appeal had rectified the mistakes made by the District Court. The court of cassation had then upheld the latter judgment, indicating that it had reflected the circumstances of the case and had met the requirements of domestic law. The applicant had therefore had a fair trial under Article 6 § 1.

22. The applicant maintained his complaint, referring to the omissions on the part of the police during its operation and arguing that in the judgment of 17 November 2010 the District Court had lawfully applied Articles 1166 and 1167 of the 2003 Civil Code and allowed his claim, and that the judgment of 21 February 2011 (as upheld on 25 July 2011) dismissing his claim had been unlawful.

2. The Court's assessment

(a) Admissibility

23. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

(b) Merits

24. The Court reiterates that it is not for it to deal with alleged errors of law or fact committed by the national courts unless and in so far as they may have infringed rights and freedoms protected by the Convention – for instance, where it can, exceptionally, be said that they are constitutive of "unfairness" incompatible with Article 6 of the Convention. The Court should not act as a fourth-instance body and will not therefore question under Article 6 § 1 the judgment of the national courts, unless their findings can be regarded as arbitrary or manifestly unreasonable (see, for instance, *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 61, ECHR 2015).

25. The Court furthermore reiterates that judgments of the national courts should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case. Without requiring a detailed answer to every argument advanced by the complainant, this obligation presupposes that parties to judicial proceedings can expect to receive a specific and explicit reply to the arguments that are decisive for the outcome of those proceedings (see *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 84, ECHR 2017 (extracts), and further references cited therein). A domestic judicial decision cannot therefore be deemed to be arbitrary to the point of prejudicing the fairness of proceedings unless no reasons are provided for it or if the reasons given are based on a manifest factual or legal error committed by the domestic court in question, resulting in a "denial of justice" (ibid., § 85).

26. The Court also recalls that the adversarial principle and the principle of equality of arms, which are closely linked, are fundamental components of the concept of a "fair hearing" within the meaning of Article 6 § 1 of the Convention. They require a "fair balance" between the parties: each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent or opponents (see *Avotiņš v. Latvia* [GC], no. 17502/07, § 119 and other references, ECHR 2016, and *Regner v. the Czech Republic* [GC], no. 35289/11, § 146, 19 September 2017). Moreover, the right to adversarial proceedings means in principle the opportunity for the parties to have knowledge of and comment on all evidence adduced or observations filed, with a view to influencing the court's decision. Furthermore, the parties should have the opportunity to make known any evidence needed for their claims to succeed (see *Clinique des Acacias and Others v. France*, nos. 65399/01 and 3 others, § 36-43, 13 October 2005). Moreover, the court deciding the case must itself respect the adversarial principle, for example if it decides a case on the basis of a ground or objection which it has raised of its own motion (see *Čepek v. the Czech Republic*, no. 9815/10, 5 September 2013, §§ 45 and 51-60).

27. Turning to the present case, the Court notes that in the final judgment of 26 April 2004 the criminal court established that the kidnappers had taken possession of the applicant's money owing to the negligent and imprecise planning of the police operation and the police officers' uncoordinated actions during it (see paragraph 7 above). A claim for damages introduced by the applicant against the police and the State Treasury was rejected by the criminal court which stated that the applicant could lodge such a claim separately in civil proceedings (ibid.). Therefore, the applicant subsequently lodged a civil claim against the police under the general tort law provisions of the Civil Code, considering them to be directly responsible for the damage caused to him.

28. The Court further notes that while the case was initially remitted several times for reconsideration, the applicant's right to receive compensation from the State was not as such in a dispute, the courts having several times allowed his claim in part, including twice by the Court of Appeal. The courts only disagreed on the applicable legal provisions (civil or administrative; see paragraph 10. above). Following the last remittal of the case for reconsideration on 22 June 2010, the applicant's claim that the police owed him damages under general tort law was granted again, under Articles 1166 and 1167 of the 2003 Civil Code, by the District Court, in its judgment of 17 November 2010 (see paragraphs 11-13 above), apparently on the basis that negligence by the police, causal link and damage had been established.

29. However, the Court of Appeal – not contesting the factual findings made by the criminal courts and the District Court regarding the negligent acts and the damage – considered that there was no relevant causal link, decided to change the legal characterisation of the applicant's civil action and examined it under a different provision, Article 1177 of the Civil Code, which provided for a specific type of objective responsibility of the State for damage caused by unidentified or insolvent perpetrators of criminal offences (see paragraph 14 above).

30. While it is naturally for the domestic courts to determine the correct legal characterisation of claims under national law, this must be done in keeping with the principle of fair trial, which requires adequate reasoning to be provided at least on the points that are decisive for the outcome of the case. In the present case, however, the Court of Appeal appears to have effectively decided on a claim that was not brought by the applicant, seeing that he had not claimed compensation as a victim of crime on the basis that the perpetrators of the kidnapping were unidentified or insolvent – which were the grounds for seeking compensation from the State under the specific compensation of victims of crime mechanism provided for under Article 1177 of the Civil Code – but had brought an ordinary tort claim against the police themselves, claiming damage as a result of the negligent or imprecise planning of their operation. In the Court's view, such a far reaching requalification of the claim brought by the applicant required clear reasoning

on, at the very least, the relationship between the provisions of general tort law and those regarding the specific State responsibility under Article 1177 of the Civil Code. However, no such reasoning was provided.

31. Furthermore, the Court of Appeal apparently disregarded the fact that the facts and legal issues that were relevant under Article 1177 of the Civil Code were very different from those on which the applicant's claim had been based. In particular, while the claim brought by the applicant and argued by him required proof of negligent acts on the part of the police and causal link between such acts and the resulting damage, what the applicant would have needed to prove under Article 1177 of the Civil Code was, apparently, that he had suffered damage as a result of a criminal act and that the perpetrators were unidentified or insolvent. Since the change of legal characterisation of the applicant's claim was made in the Court of Appeal's judgment, it was essential, from the perspective of the most basic requirements of fair trial and the adversarial principle, to afford the applicant an opportunity to submit evidence and argue on the points relevant to the provision found to be applicable, either by returning the case for renewed examination by the District Court or in another procedural manner, based on the possibilities under domestic law (see, *mutatis mutandis*, *Clinique des Acacias and Others*, cited above, §§ 38-43; *Prikyan and Angelova v. Bulgaria*, no. 44624/98, §§ 42-53, 16 February 2006; and *Čepek*, cited above, §§ 51-60).

32. Lastly, as regards the Government's submission that the District Court had been mistaken in applying Articles 1166 and 1167 because it had not been established that the police had been responsible for any illegal decisions, actions or omissions, the Court notes that the District Court relied on the factual findings made in the judgment of 26 March 2004 in the related criminal proceedings and drew its conclusions on the basis of the evidence before it. Moreover, importantly, the Court of Appeal (i) did not contest those findings, (ii) did not state that they had been insufficient to prove the above-mentioned omissions on the part of the police during their operation against the kidnappers, and (iii) did not suggest that the above-mentioned facts should be further established or confirmed in any proceedings separate to those leading to the judgment of 26 March 2004 of the criminal court.

33. In view of the above, the Court considers that the lack of clear reasons for the requalification of the applicant's claim by the Court of Appeal – which initially twice allowed that claim (see paragraph 10. above) – and its resulting conclusion against him without providing him with a possibility to submit relevant evidence and arguments following that requalification cannot but be seen as fully unjustified and contrary to the Article 6 requirement of fairness of civil proceedings and to the principle of adversarial proceedings. The summary ruling of 25 July 2011 – whereby the Higher Specialised Court upheld the Court of Appeal's judgment of 21 February 2011 (see paragraph 15 above) – did not add any clarity either, even though in his appeal in

cassation the applicant had referred to an incorrect application of the substantive law (ibid.).

34. There has accordingly been a violation of Article 6 § 1 of the Convention.

B. Length of the proceedings

35. In their submissions (dated 14 January 2019) regarding the applicant's claims for just satisfaction, the Government submitted that after the communication of the case on 12 June 2018 the applicant had introduced a new complaint concerning the length of the civil proceedings; the Government suggested that the Court should not examine that complaint.

36. The Court notes, however, that by a letter of 23 October 2012 the Government were informed that it had been decided, on 16 October 2012, that notice of the applicant's complaint about the length of the civil proceedings should be given to the Government.

37. It further notes that in the instant case the proceedings lasted from March 2005 till 25 July 2011, that is, for six years and four months. Having examined all the materials submitted to it and having regard to the criteria established in its case-law on the subject (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII), the Court considers that the above-mentioned length of the proceedings was not excessive or unreasonable, especially taking into account that during the above period the case was pending before the courts of three levels of jurisdiction. Although there were several reconsiderations of the case, in the Court's view that fact alone is not such as to warrant a finding of the violation of the Convention, especially taking into account that the applicant did not indicate any particular period of inactivity which could be attributed to the domestic authorities. Lastly, the Court considers that even though the proceedings at issue were of some importance for the applicant, he did not refer to any particular ground which would require the domestic courts to deal with his case with particular urgency vis-à-vis other cases pending before them. Nor does the Court find such grounds.

38. In view of the above, the Court considers that the complaint is manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

39. The applicant also complained under Article 1 of Protocol No. 1 that his property rights had been breached as a result of the courts' refusal to allow his claim against the police. The above provision reads as follows:

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

1. The parties' submissions

40. The Government submitted that the applicant's complaint should be rejected for non-exhaustion of domestic remedies, because (i) he had not lodged a claim against the police, asking the courts to declare their actions unlawful during the operation; and (ii) he had failed to lodge a claim for damages against the kidnappers in accordance with the procedural rules. They further submitted that the conditions under Article 1177 of the Civil Code, applied in the present case, had not been met, as the Court of Appeal had not considered that the kidnappers' insolvency had been established.

41. The applicant argued that the police had acted as the guarantor of the security of his money, so he had sought its return from the police. Moreover, by the time the kidnappers had been arrested, they had spent the ransom money and had been insolvent, so it would have made no sense for him to bring proceedings against them. He had submitted certain documents showing that the kidnappers had had no property except for one of them who had co-owned a flat.

2. The Court's assessment

42. In the present case the Court has found a violation of Article 6 § 1 of the Convention on account of unfairness of the civil proceedings instituted by the applicant. In this connection, it notes that the applicant is entitled under Ukrainian law to request a rehearing of his case in the light of the Court's finding that the domestic courts did not comply with Article 6 in his case (see paragraph 19 above; see also *Bochan v. Ukraine*, no. 7577/02, § 97, 3 May 2007; *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 18, ECHR 2015; *Sorokin v. Ukraine* [Committee], no. 3450/09, § 30, 18 December 2018; and *Stryzh v. Ukraine* [Committee], no. 39071/08, § 36, 16 January 2020).

43. In view of the above, and having regard to its conclusions under Article 6 § 1 of the Convention (see paragraphs 24-34 above), the Court considers that there is no need to consider either the admissibility or the merits of the applicant's complaint under Article 1 of Protocol No. 1 (see *Bochan*, § 91, and *Bochan (no. 2)*, § 68; both cited above; and *Andreyevy v. Russia* [Committee], no. 83399/17, § 23, 28 January 2020).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed 277,000 United States dollars (USD) in respect of the pecuniary damage that he had suffered as a result of the failure of the police operation and 15,000 euros (EUR) in respect of non-pecuniary damage, stating that he had become disabled as a result of the 1998 events, the subsequent lengthy court proceedings and the ensuing stress that he had suffered.

46. The Government contested these claims.

47. The Court considers that the applicant has not demonstrated the existence of a causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it reiterates that the applicant is entitled under Ukrainian law to request a rehearing of his case in the light of the Court's finding that the domestic courts did not comply with Article 6 in his case (see paragraphs 19 and 24-34 above). As to the applicant's claim for compensation for non-pecuniary damage, the Court awards him EUR 3,600, plus any tax that may be chargeable.

B. Costs and expenses

48. The applicant also claimed EUR 3,500 for the costs of legal services incurred during the proceedings before the Court (which, he submitted, had included studying the case file, corresponding with the Court, responding to requests for information, translating documents, and undertaking other actions relating to his representation before the Court). He provided an invoice from Ms Gusieva in the amount of 108,000[1] hryvnias (UAH) for the provision of services relating to his representation before the Court.

49. The Government considered that the above claim was not supported by any documents and that it was not possible to ascertain the precise nature of the services rendered. They furthermore considered the claimed amount to be excessive and invited the Court to decrease it in the event that it found any violation of the Convention in the present case.

50. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 1,000

[1] Around EUR 3,357 at the material time

for the costs incurred in the proceedings before the Court, plus any tax that may be chargeable to the applicant.

C. Default interest

51. 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 complaint under Article 6 § 1 of the Convention regarding the unfairness of the civil proceedings admissible and the complaint under the same provision about their length inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the unfairness of the civil proceedings;

3. *Holds* that there is no need to examine separately the complaint under Article 1 of Protocol No. 1;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,000 (one 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;

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

Done in English, and notified in writing on 14 January 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik	Síofra O'Leary
Registrar	President