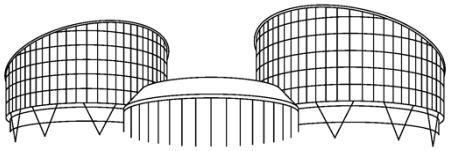

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF GROS v. SLOVENIA

(Application no. 45315/18)

JUDGMENT

Art 6 § 1 (civil) • Access to court • Relevant statute allowing for subjective time-limit (from the applicant's learning of the occurrence of adverse consequences) for application before Constitutional Court • Application for review of constitutionality and legality of several-year-old municipal ordinances dismissed as out of time, on ground of applicant's failure to demonstrate that he could not have learned of the adverse consequences earlier, despite lack of evidence contradicting the time-line provided by the applicant • Unforeseeable expectation • Fair balance upset

STRASBOURG

7 July 2020

FINAL

07/10/2020

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

In the case of Gros v. Slovenia,

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

Jon Fridrik Kjølbro, *President,*
Marko Bošnjak,
Egidijus Kūris,
Ivana Jelić,
Arnfinn Bårdsen,
Darian Pavli,
Peeter Roosma, *judges,*
and Stanley Naismith, *Section Registrar,*

Having regard to:

the application 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, Mr Vitomir Gros ("the applicant"), on 21 September 2018;

the decision to give notice to the Slovenian Government ("the Government") of the complaints concerning Article 6 § 1 of the Convention (access to a court) and Article 1 of Protocol No.1 to the Convention and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 9 June 2020,

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

INTRODUCTION

The case concerns municipal ordinances that classified paths crossing the applicant's plots of land as "public roads" ("the Ordinances"). The applicant complained under Article 6 § 1 of the Convention as regards the right of access to the Constitutional Court to challenge the Ordinances and under Article 1 of Protocol No. 1 as regards the ownership of the disputed plots of land.

THE FACTS

1. The applicant was born in 1942 and lives in Kranj. He was represented by Mr A. Drobnič, a lawyer practising in Kranj.

2. The Government were represented by their Agent, Ms T. Mihelič Žitko, State Attorney.

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

I. DENATIONALISATION PROCEEDINGS

4. On 10 March 1992 the legal successors of the deceased M.M. and D.M. (hereinafter "the denationalisation beneficiaries") initiated denationalisation proceedings before the Kranj Administrative Unit (*Upravna enota Kranj* – hereinafter "the Unit"). The nationalised property included plots of land nos. 444/18 and 444/29 (hereinafter "the disputed plots of land") – both in the cadastral municipality of Kranj. On 3 July 1996 the applicant, who was recognised by the Unit as one of the legal successors of the denationalisation beneficiaries, was named a trustee for special cases (*skrbnik za posebne primere*) to manage immovable property for their unidentified heirs.

A. Municipal Ordinances

5. On 10 December 2003 the Municipality of Kranj (hereinafter "the Municipality") adopted the Ordinance on the Classification of Municipal Roads and Cycling Lanes in the Municipality of Kranj ("the 2004 Ordinance"); Article 7 thereof defined the road sections crossing the disputed plots of land as a "local road" (*lokalna cesta*). The 2004 Ordinance was published in the Official Gazette of 16 January 2004 and entered into force on 31 January 2004. On 20 June 2012 the Municipality adopted the 2012 Ordinance on the Classification of Municipal Roads in the Municipality of Kranj ("the 2012 Ordinance") and, in Article 8 thereof, defined the road sections crossing the disputed plots of land as a "public path" (*javna pot*). The 2012 Ordinance was published in the Official Gazette of 6 July 2012 and entered into force on 21 July 2012.

B. Partial restitution decisions

6. On 23 October 2008 the Unit issued a partial decision by which, *inter alia*, plot of land no. 444/18 (a yard measuring 2,337 square metres) was to be restored to the ownership and possession of the denationalisation beneficiaries. The Unit noted that the Municipality, as the entity responsible for restitution, had not objected to the restitution of that plot of land and that there were no obstacles under the Denationalisation Act (see paragraph 17 below) to restoring the title to the immovable property in question to the denationalisation beneficiaries. Plot of land no. 444/29 was established, in the course of the denationalisation proceedings, on the basis of a subdivision of plot no. 444/24, following which the Municipality informed the Unit that it did not object to the restitution of plot of land no. 444/29 (the part of plot of land no. 444/24 that did not form an important crossroads). On 2 June 2011 the Unit issued a partial decision by which, *inter alia*, plot of land no. 444/29 (a path measuring 1,716 square metres) was to be

restored to the ownership and possession of the denationalisation beneficiaries.

7. Once they became final, the partial decisions were registered in the land register and the applicant was entrusted with temporarily managing the restored property.

C. Annulment proceedings

8. On 8 April 2016 the Ministry of the Environment and Spatial Planning (hereinafter "the Ministry") notified the Unit that two public paths that had been classified as public roads by the Ordinances (see paragraph 5 above) ran over the disputed plots of land and proposed that the partial decisions (see paragraph 6 above) be declared null and void. It held that public roads constituted a public good (*javno dobro*) and were accordingly excluded from legal transactions. The restitution of such immovable property and the implementation of the denationalisation decision was thus impossible (see paragraph 17 below).

9. On 19 July 2016 the Unit declared the partial decisions (see paragraph 6 above) null and void in respect of the parts of the decisions relating to the disputed plots of land. It held that the public paths running over them had been classified as public roads by the 2004 Ordinance – that is to say before the partial decisions had been issued. Therefore, the implementation of the partial decisions in respect of the parts of the decisions relating to the disputed plots of land was impossible. The decision was served on the applicant on 6 August 2016.

10. On 17 March 2017 the Ministry allowed an appeal lodged by the applicant and quashed the Unit's decision of 19 July 2016, remitting the case to the Unit for reconsideration. According to the latest information available to the Court, the proceedings before the Unit are pending.

11. On 9 April 2018 the Škofja Loka Local Court delivered a decision on inheritance with respect to one of the deceased denationalisation beneficiaries (see paragraph 17 below). The applicant was designated as one of that person's heirs in respect of property restored in the denationalisation proceedings, including the disputed plots of land. According to the latest information available to the Court, the inheritance proceedings are pending at the appellate stage.

II. CONSTITUTIONAL COURT PROCEEDINGS

A. Application for constitutional review

12. On 19 August 2016 the applicant lodged an application with the Constitutional Court for a review of the constitutionality and legality (hereinafter "the application for constitutional review") of the Ordinances

(see paragraph 5 above), in so far as they classified as "public" the paths crossing the disputed plots of land. He alleged that the Municipality had classified them as public paths in spite of the fact that the urban design plan that had been in force at the time and had been published by way of a municipal ordinance had not envisaged any road classified as "public" in the area. The applicant also referred to the denationalisation proceedings and, more specifically, to the date of their initiation and the issuance of the partial restitution decisions. He alleged that the disputed plots of land, which had been used only by the legal successors of the denationalisation beneficiaries, had been restored in denationalisation proceedings. By having adopted the Ordinances while the denationalisation proceedings had been pending, the Municipality had, in his opinion, violated the Denationalisation Act. He submitted that he had learned of adverse consequences arising from the challenged legal acts on 6 August 2016, when he had been served with the decision by which the restitution of the disputed plots of land had been annulled (see paragraph 9 above). He had relied on the Municipality's existing urban plan and could not have foreseen that, in respect of the disputed plots of land, the Municipality would adopt a regulation incompatible with the Municipality's existing urban plan. The applicant attached copies of, *inter alia*, the partial restitution decisions, the Unit's decision to declare the partial decisions null and void, and the urban plan. On 19 July 2017 the applicant supplemented his application by referring to, *inter alia*, (i) the above-mentioned urban plan, (ii) the division of plot of land no. 444/24 into plots that had been classified as "public" and would not be returned (to the denationalisation beneficiaries) and those that had not been classified as public (including plot of land no. 444/29), and (iii) the relevant extracts from the land register showing the status of the disputed plots of land at the relevant time.

B. Constitutional Court's decision

13. On 20 February 2018 the Constitutional Court rejected the application for constitutional review as having been lodged out of time (see paragraph 14 below). The applicant, who had relied on the subjective time-limit, should have proved that he had learned only after a certain period of time had elapsed since the entry into force of the challenged regulations that adverse consequences had arisen and should have substantiated why that period could not have fallen within the time-limit of one year following those regulations entering into force. The Constitutional Court noted that the local roads or public paths in question had been classified as such since the entry into force of the 2004 Ordinance and before that by the Ordinance on the Classification of Municipal Roads and Cycling Lanes in the Municipality of Kranj (Official Gazette no. 113/2000); it also held that the applicant – in stating that he had learned of that classification only in

August 2016 (when he had been served with the decision of 19 July 2016) – had not satisfied the aforementioned requirement; he had failed to explain why he could not have learned of the classification before being served with that decision. Accordingly, by referring to the fact that he had relied on the urban plan of 2002, the applicant had "not properly substantiated the timelines" of the application. That is to say, by only referring to the fact that he had relied on the urban plan of 2002, the applicant had not substantiated that he had lodged the application with the Constitutional Court within the relevant time-limit. The Constitutional Court's decision was served on the applicant on 24 March 2018.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

14. The relevant provisions of the Constitutional Court Act (hereinafter "the CCA", Official Gazette no. 15/94 with relevant amendments) read as follows:

Section 24

"...

(3) When an executive regulation or a general measure adopted [providing for] the exercise of public authority has direct effects and interferes with rights, legal interests or legal position of a [person], an application [for constitutional review] may be lodged within one year after its entry into force or within one year from the date on which the [person lodging the application] learned of the occurrence of adverse consequences."

Section 24b

"(1) A request shall contain the following information:

– ...

– information regarding the fulfilment of the statutory conditions for lodging a request; ...

(2) An application shall contain, in addition to the information referred to in the preceding paragraph ..."

15. The Government submitted several Constitutional Court decisions (decisions nos. U-I-267/10 of 15 November 2012; U-I-203/12 of 13 January 2014; U-I-323/12 of 6 March 2014; U-I-237/12 of 7 April 2014; U-I-203/13 of 23 December 2014; U-I-218/13 of 29 December 2014; U-I-147/13 of 2 January 2015; U-I-18/13 of 6 January 2015; U-I-239/13 of 17 March 2015; U-I-194/14 of 14 October 2015; U-I-117/14 of 15 October 2015; U-I-181/14 of 16 October; U-I-207/14 of 19 October 2015; U-I-118/14 of 9 February 2016; U-I-136/15 of 2 March 2016; U-I-25/15 of 7 March 2016; U-I-79/15 of 7 March 2016; and U-I-203/15 of 23 March 2016) in which the latter emphasised that when assessing compliance with timelines, it

considered an objective time-limit first, since regulations were published in official journals with the aim of informing thereof all parties concerned before their entry into force. A person who lodged an application for constitutional review within the subjective time-limit had to exhaustively and convincingly substantiate when he had learned that adverse consequences had arisen and state the facts and circumstances on the basis of which that could be verified and assessed. In order to successfully rely on the subjective time-limit, the person who lodged the application in question had to (i) prove that he had learned of such adverse circumstances only after a certain period of time had elapsed since the entry into force of a particular regulation, and (ii) substantiate why that period could not have fallen within the time-limit of one year of its entry into force. The Constitutional Court's assessment would then depend on how convincing those arguments were.

16. The Government furthermore submitted numerous Constitutional Court decisions in which the latter found that challenged municipal ordinances classifying as "public" roads on private lands failed to comply with the Constitution, including several decisions in respect of which an application for constitutional review was lodged within the subjective time-limit (decisions nos. U-I-202/08 of 9 July 2009; U-I-200/10 of 6 July 2011; U-I-208/10 of 20 January 2011; U-I-75/11 of 6 July 2011; U-I-204/11 of 29 November 2012; U-I-13/12 of 13 September 2012; and U-I-74/11 of 6 July 2011).

17. Under section 16(1) of the Denationalisation Act (Official Gazette no. 27/91 with relevant amendments), nationalised property shall be restored to be owned and possessed by the denationalisation beneficiary in question by the restoration of the relevant title or the recovery of the relevant ownership stake. The restitution of immovable property may not be possible, *inter alia*, if it is excluded from legal transactions, or if title thereto cannot be acquired (section 19(1)). If it is not possible to restore immovable property to the ownership of and possession by the beneficiary, that beneficiary shall be entitled to compensation through the establishment of an ownership stake in a legal person, in shares held by the Republic of Slovenia or in bonds issued for such a purpose (section 42). If inheritance proceedings regarding a denationalisation beneficiary have been finally concluded and no decision has been adopted on the inheritance of the property that belongs to that person in accordance with the denationalisation decision, new inheritance proceedings shall be conducted regarding that property (section 74).

THE LAW

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

18. The applicant complained that by rejecting his application for review of constitutionality as out of time, the Constitutional Court had denied him access to a court, in violation of Article 6 § 1 of the Convention, which, as far as relevant, reads as follows:

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

A. Admissibility

1. The parties' submissions

19. The Government objected to the applicant's victim status. They argued that the alleged violations could only affect the rights of the unknown heirs to whom the disputed plots of land had passed by virtue of the partial decisions (see paragraph 6 above). The applicant was only a trustee for special cases representing the unknown owners/heirs and managing their property, whereas the decision on inheritance of that property was not yet final (see paragraph 11 above).

20. The applicant argued that he was a victim of the alleged violations as a legal successor of the denationalisation beneficiaries and as the administrator of their property. He relied on the inheritance decision proclaiming him as an heir of the denationalisation beneficiaries (see paragraph 11 above).

2. The Court's assessment

21. In order to be able to lodge an application in accordance with Article 34, an individual must be able to show that he or she was "directly affected" by the measure complained of (see *Burden v. the United Kingdom* [GC], no. 13378/05, § 33, ECHR 2008, and *İlhan v. Turkey* [GC], no. 22277/93, § 52, ECHR 2000-VII).

22. The applicant complained that his Convention rights had been directly affected by the Constitutional Court's decision and the decision on the annulment of the partial denationalisation decisions. The Court observes that in the denationalisation proceedings the applicant was recognised as a legal successor of the denationalisation beneficiaries (see paragraph 4 above). His status as an heir, as regards the disputed plots of land, was accepted by the first-instance court during the inheritance proceedings (see paragraph 11 above). The Court would, moreover, point out that the Slovenian Constitutional Court did not reject the applicant's application for constitutional review for lack of interest or victim status (see paragraph 13

above). It therefore considers that the applicant has adequately demonstrated that he was directly affected by the Constitutional Court's decision taken in respect of the disputed plots of land and finds that he may claim to be a victim in regard of his Article 6 complaint.

23. The Court furthermore 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

1. The parties' submissions

24. The applicant maintained that he had learned of the adverse consequences arising from the challenged Ordinances on 6 August 2016. On that day he was served with the decision annulling the partial denationalisation decisions. By lodging his application for constitutional review on 16 August 2016 (see paragraph 12 above), he had complied with the subjective time-limit. He argued that in his application he had convincingly substantiated his compliance with the timelines, but that the Constitutional Court had not taken into account his arguments and evidence. In particular, it had not considered that he had relied on the ordinance on the urban plan (see paragraph 12 above) and that the Municipality had initiated the proceedings leading to the division of the plot of land no. 444/24 into (i) the plots that had been restored (nos. 444/29, 444/31 and 444/33) and (ii) the plots that constituted parts of the classified road (which had not been restored – nos. 444/30, 444/32 and 444/34). In his observations of 19 April 2019, the applicant argued that the Municipality and the Unit had not objected to the *in natura* restitution of the disputed plots of land, nor had they invoked the Ordinances in the denationalisation proceedings. He had trusted the land register, in which the denationalisation beneficiaries had been noted as the owners of the disputed plots of land.

25. The Government emphasised that the applicant had made only two statements with respect to the timeliness in his application for constitutional review: that he had learned of the adverse consequences on 6 August 2016 and that he had relied on the ordinance on the applicable urban plan (see paragraph 12 above). They argued that the latter had been published in the same way as the challenged Ordinances and that the timelines in respect of the lodging of the application within the subjective time-limit could not be substantiated only by reference to that circumstance. Moreover, he had been bound by section 24(b) of the CCA (see paragraph 14 above) and should have provided information regarding the fulfilment of all statutory conditions for lodging the application. The Constitutional Court, which had been bound only by the statements made and the evidence proposed by the applicant in his application for constitutional review, had therefore properly rejected the application, taking the view that it had consistently held in all

other similar cases (see paragraphs 15 and 16 above). In this connection, the Government drew attention to the fact that the arguments regarding compliance with the subjective time-limit that the applicant had put forward in his observations of 19 April 2019 before the Court had not been made before the Constitutional Court.

2. The Court's assessment

26. The relevant principles concerning the right of access to a court – and in particular, access to superior courts – are summarised in the case of *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-99, 5 April 2018). The Court reiterates that the right of access to courts may be subject to limitations, which, however, must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (ibid., § 78).

27. Turning to the present case, the Court notes that the Constitutional Court rejected the applicant's application for constitutional review as being out of time on the basis of section 24 of the CCA, which provides that such an application has to be lodged within one year of the moment that the challenged regulation entered into force or the person lodging the application learned of the occurrence of adverse consequences (see paragraph 14 above). The applicant argued that he had learned of the adverse consequences arising from the Ordinances on 6 August 2016 (see paragraph 9 above) and that, by lodging his application for constitutional review on 19 August 2016 (see paragraph 12 above), he had complied with the aforementioned subjective time-limit. The Government, conversely, maintained that the applicant had failed to explain why he could not have learned of the adverse consequences earlier and that his application had thus been rightly rejected.

28. The Court observes that for his part, the applicant tried to demonstrate his compliance with the subjective criteria by adducing arguments that cannot be considered unreasonable. In particular, in his application for constitutional review, the applicant specifically mentioned and submitted evidence related to the fact that the challenged 2004 Ordinance had been adopted while the denationalisation proceedings had been pending and that the land at issue had been restored on the basis of denationalisation decisions that had already taken final effect (see paragraph 12 above). In his additional submissions to the Constitutional Court he referred to the status of the disputed plots of land according to the land register and to the fact that the plots of land that had been subject to denationalisation proceedings had been divided into those that were classified as "public" and would not be returned to the denationalisation

beneficiaries and those that were not classified as public (including the disputed plots of land). He also referred to the urban plan of 2002, which had been in force at the relevant time and had not envisaged in the area a road classified as "public" (see paragraph 12 above). In its decision the Constitutional Court held that the applicant should have proved that he had learned of the adverse consequences only after a certain period of time had elapsed since the entry into force of the challenged Ordinances and that he should have substantiated why that period could not have fallen within the time-limit of one year following those regulations entering into force (see paragraph 13 above). The Constitutional Court noted that the local roads or public paths in question had been classified as such since the entry into force of the 2004 Ordinance and before that by another Ordinance from 2000. In the light of that fact, it considered that the applicant had failed to explain why he could not have learned of the classification before being served with the decision of 19 July 2016 and that, by referring to the fact that he had relied on the urban plan of 2002, the applicant had "not properly substantiated the timelines" of the application (see paragraph 13 above).

29. In this connection the Court observes that the relevant provisions of the CCA (see paragraph 14 above) do not require from an appellant relying on the subjective criteria defining the beginning of the relevant one-year-period to demonstrate that he or she could not have learned of the adverse consequences at any earlier time. Likewise, the Constitutional Court's case-law relied upon by the Government (see paragraph 15 above) provides only very limited support for the introduction of such a requirement. The Court also observes that in numerous decisions, the Constitutional Court has accepted appellants' statements regarding the moment at which they learned of the adverse consequences of challenged regulations (see paragraph 16 above). Against that background, the Court accepts that it was difficult for the applicant to foresee what evidence could be considered sufficient for the purpose of meeting the subjective criteria defining time-limits for introducing such an application with the Constitutional Court and, in particular, that he would be expected to explain why he could not have done so earlier.

30. Reiterating that it is primarily the role of the relevant national authorities to decide upon the admissibility and relevance of evidence (see *Schenk v. Switzerland*, 12 July 1988, § 46, Series A no. 140, and *Engel and Others v. the Netherlands*, 8 June 1976, § 91, Series A no. 22), the Court is in no position to assess when the applicant should be considered to have "learned" of the adverse consequences in question. However, the Court observes that the Constitutional Court expected the applicant to show that he could not have done so earlier, even in the absence of statements or evidence contradicting the timeline he had established in the application for constitutional review (compare and contrast *Peršuh v. Slovenia* (dec.) [Committee], no. 66721/14, § 34, 28 November 2017). Furthermore, this

particular expectation appears not to have been based on any statutory requirement regulating access to the Constitutional Court in such type of proceedings (see paragraph 14 above). Therefore, the Court considers that the Constitutional Court imposed an excessive burden on the applicant that was, furthermore, unforeseeable, given the circumstances of the present case, thus upsetting the requisite fair balance between, on the one hand, the legitimate aim of ensuring compliance with the formal conditions for applying, and on the other, the right of access to that court.

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

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

32. The applicant complained that the State had nationalised his land in violation of Article 1 of Protocol No. 1, which 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."

33. The Government made the same objection concerning victim status as they made under Article 6 of the Convention. They furthermore submitted that the applicant had not complied with the requirement of the exhaustion of domestic remedies. In particular, the Unit's decision of 19 June 2016 declaring the restitution of the disputed plots of land to the denationalisation beneficiaries null and void had been set aside by the Ministry (see paragraph 10 above). The relevant administrative proceedings regarding the Ministry's proposal that the partial decisions be declared null and void (see paragraph 8 above) were still pending before the Unit and the applicant would be able to challenge it once delivered.

34. The applicant maintained that, by adopting the decision of June 2016 on the basis of the unlawful Ordinance (see paragraph 9 above), the Unit had again nationalised the disputed plots of land.

35. The Court does not find it necessary to examine the Government's objection concerning the applicant's victim status (see paragraph 33 above), as the complaint is in any event inadmissible, for the reasons set out below.

36. The Court reiterates that States do not have to answer for their acts before an international body until they have had an opportunity to put matters right through their own legal system, and those who wish to invoke the supervisory jurisdiction of the Court in respect of their complaints

against a State are thus obliged to first use the remedies provided by the national legal system (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 70, 25 March 2014, and *Mozer v. the Republic of Moldova and Russia* [GC], no. 11138/10, § 115, 23 February 2016).

37. Turning to the present case, the Court notes that the applicant essentially complained about the effects of the Unit's decision of 19 June 2016 on his rights under Article 1 of Protocol No. 1. It furthermore notes that, following the applicant's appeal to the Ministry, the impugned decision was quashed, and the relevant proceedings are still pending before the Unit (see paragraph 10 above). It does not consider it appropriate to deal with the matter before it is decided by way of a final domestic decision. Accordingly, and without prejudice to the possibility that the applicant may bring new proceedings before this Court after exhausting the domestic remedies, the Court finds his complaint under Article 1 of Protocol No. 1 to be premature.

38. It follows that this complaint must be rejected, pursuant to Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

40. The applicant claimed 1,500 euros (EUR) in respect of non-pecuniary damage.

41. The Government argued that the claim was unsubstantiated and that there was no causal link between the alleged violations and the claim.

42. The Court awards the applicant the whole amount sought – that is to say EUR 1,500 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

B. Costs and expenses

43. The applicant also claimed EUR 3,062.07 for the costs and expenses incurred in domestic proceedings and EUR 3,052.68 for those incurred before the Court.

44. The Government argued that the claim was unsubstantiated and excessive.

45. 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 were 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 of EUR 2,860 covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

46. 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 concerning Article 6 § 1 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*
   (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 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,860 (two thousand eight hundred and sixty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

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

Done in English, and notified in writing on 7 July 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Jon Fridrik Kjølbro
President