



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

FOURTH SECTION

**CASE OF BALAN v. MOLDOVA**

*(Application no. 19247/03)*

JUDGMENT

STRASBOURG

29 January 2008

*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 Balan v. Moldova,**

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

Nicolas Bratza, *President*,

Josep Casadevall,

Giovanni Bonello,

Kristaq Traja,

Stanislav Pavlovschi,

Ján Šikuta,

Päivi Hirvelä, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 8 January 2008,

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

**PROCEDURE**

1. The case originated in an application (no. 19247/03) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Moldovan national, Mr Pavel Bălan, on 27 February 2003.

2. The applicant was represented by Mr V. Nagacevschi, from Lawyers for Human Rights, a non-governmental organisation based in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicant alleged, in particular, that his rights under Article 1 of Protocol No. 1 to the Convention had been infringed as a result of the refusal of the domestic courts to compensate him for the unlawful use of his protected work.

4. The application was allocated to the Fourth Section of the Court. On 6 October 2006 the President of that Section decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1938 and lives in Chişinău.

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

7. In 1985 the applicant published the photograph 'Soroca Castle' in the album *Poliptic Moldav*. He received author's fees for that photograph.

8. In 1996 the Government adopted a decision regarding national identity cards using, *inter alia*, the photograph taken by the applicant as a background for the identity cards issued by the Ministry of Internal Affairs of Moldova ("the Ministry"). The applicant was not consulted and did not agree to such a use of the photograph.

9. In 1998 he requested the Ministry to compensate him for the infringement of his rights caused by the unlawful use of the photograph he had taken, as well as to conclude a contract with him for the future use of the photograph.

10. When his request was rejected, the applicant initiated court proceedings against the Ministry on 10 November 1998. On 24 March 1999 the Chişinău Regional Court partly allowed his claims and found that he had been the author of the photograph which had been used without his agreement. The court awarded him 4,050 Moldovan lei (MDL), equivalent to 568 United States dollars (USD). The court also obliged the Ministry to publish an apology but rejected the applicant's request that the Ministry be ordered to conclude a contract with him for the future use of the photograph.

11. The applicant appealed. He submitted, *inter alia*, that the reason why he had not asked for the withdrawal of the identity cards already issued in infringement of his rights and for new identity cards using the photograph taken by him not to be issued in the future was that this would have incurred unreasonably high costs for the Ministry and would have caused unnecessary problems for identity card holders. He had therefore requested the conclusion of a contract with the Ministry.

12. On 16 September 1999 the Court of Appeal quashed the lower court's judgment and rejected the applicant's requests.

13. On 22 December 1999 the Supreme Court of Justice quashed the Court of Appeal's judgment and upheld the judgment of the Chişinău Regional Court as regards the award to the applicant, while rejecting his request for an apology to be published. The court also ordered a re-examination of the case as regards the conclusion of a contract with the applicant for the future use of the photograph since, in its opinion, he had such a right.

14. From 1 May 2000 the Ministry ceased using the photograph taken by the applicant as a background for identity cards.

15. In a new set of proceedings the applicant requested compensation for the financial loss caused by the continued unlawful use of his photograph between the date of the judgment, 24 March 1999, and 1 May 2000. Since more than 260,000 identity cards had been issued during the relevant period, he claimed 10% of the amount paid by the identity cards' owners to the State (MDL 2,403,137). He also claimed compensation for infringement of his moral rights (MDL 200,000).

16. On 6 November 2001 the Chişinău Regional Court awarded the applicant MDL 180,000 in compensation for pecuniary damage and MDL 3,600 for non-pecuniary damage, while rejecting his request to oblige the Ministry to conclude a contract with him.

17. On 26 March 2002 the Court of Appeal quashed that judgment and rejected the applicant's claims. The court found that, while the applicant's authorship of the relevant photograph had been clearly established, he had been compensated by the judgment of 24 March 1999. Since the court had not prohibited the use of the photograph in future and since the applicant himself had not requested such a prohibition, the identity cards already issued or any cards issued in the future were no longer covered by the Copyright and Related Rights Act 1994 ("the 1994 Act") (no.293-XII) (see paragraph 19 below). Accordingly, the applicant could not allege an infringement of his rights.

18. On 16 October 2002 the Supreme Court of Justice essentially repeated the reasons given in the judgment of the Court of Appeal and rejected an appeal by the applicant on points of law. While confirming the applicant's intellectual property rights in respect of the photograph he had taken, it added that an identity card was an official document which could not be subject to copyright.

## II. RELEVANT DOMESTIC LAW

19. The relevant provisions of the Copyright and Related Rights Act (no. 293-XI) of 23 November 1994 read as follows:

### “Section 4

(4) The author's rights do not depend on the property right over the material object in which the relevant protected work is embodied. Purchasing the object does not imply the transfer to the purchaser of any copyright set out in the present Act.

### Section 6

(1) The author's rights cover literary, artistic and scientific protected works in the form of:

...

i) ... photographic works ...;

#### Section 7

(1) The following shall not constitute objects of copyright:

(a) official documents ...

#### Section 9

...

(2) The personal (moral) rights of the author cannot be assigned and continue to be protected if the copyright is assigned.

#### Section 19

The use of the author's protected work by third persons ... is permitted on the basis of a contract concluded with the author or with his or her successors, except for the cases mentioned in sections 20-23.

#### Section 24

(1) The copyright ... may be transferred by the authors or other copyright owners through authorship contracts.

#### Section 25

(1) The use of ... artistic works in breach of the copyright of their authors is unlawful.

#### Section 38

(1) The owner of the copyright can request from the person who has infringed this right:

(a) the recognition of this right;

(b) the re-establishment of the situation pertaining before the infringement of the right and the cessation of the actions infringing the author's rights or which may lead to such an infringement;

(c) compensation for losses or lost revenue;

(d) transfer of the revenues obtained through the unlawful use of the protected work, in lieu of compensation for the losses or lost revenue;

(e) compensation of between 10,000 and 20,000 times the minimum wage in lieu of compensation for losses or the transfer of the revenues obtained through the unlawful use of the protected work;

(2) The sanctions mentioned under paragraph (1) (c)-(e) above are applied in accordance with the choice of the holder of the copyright”.

20. The relevant provisions of the Administrative Proceedings Act (no. 793) of 10 February 2000 read as follows:

“Section 4

The following cannot be challenged before administrative courts:

...

(c) laws, Presidential Decrees with a normative character, Government orders and decisions with a normative character, ...”

## THE LAW

21. The applicant complained of a violation of his right to a trial within a reasonable time, as guaranteed by Article 6 of the Convention.

Article 6 § 1 of the Convention, in so far as relevant, provides:

“1. In the determination of his civil rights and obligations ... everyone is entitled to a fair hearing ... within a reasonable time...”

22. The applicants also complained of a violation of Article 1 of Protocol No. 1 to the Convention as a result of the failure to award him compensation following the breach of his intellectual property rights.

Article 1 of Protocol No. 1 to the Convention 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.”

## I. ADMISSIBILITY

23. In his initial application the applicant complained of the excessive length of the proceedings in his case, contrary to Article 6 § 1 of the Convention. However, in his observations on the admissibility and merits of the case he asked the Court not to proceed with the examination of this complaint. The Court finds no reason to examine it.

24. The Court considers that the applicant's complaint under Article 1 of Protocol No. 1 to the Convention raises questions of fact and law which are

sufficiently serious that their determination should depend on an examination of its merits. No grounds for declaring it inadmissible have been established. The Court therefore declares the complaint admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider the merits of the complaint.

## II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

### A. Arguments of the parties

#### 1. *The Government*

25. The Government submitted that in examining the applicant's case the domestic courts had applied the wrong law. The 1994 Act (see paragraph 19 above) was not applicable, since the applicant's protected work had been created in 1985, before the enactment of the 1994 Act. Moreover, the 1994 Act had no provisions regarding rights over works created before its entry into force. Accordingly, the courts should have applied the old Civil Code, in force between 1964 and 2003. The Government advanced arguments as to what the applicant's legal position would have been had the old Civil Code been applied.

26. The Government also referred to the applicant's failure to request the courts in 1999 to prohibit the further use of his photograph by the Ministry, which he had been entitled to do under section 38 (1) (b) of the 1994 Act (see paragraph 19 above). They considered that, as a result, no interference with the applicant's rights had taken place when the courts rejected his claims for compensation and when the Court of Appeal found that the past or future use of his photograph in issuing identity cards did not come under the protection of the 1994 Act. Moreover, since identity cards were official documents, no intellectual property rights could be exercised over them, as found by the domestic courts (see also section 7 of the 1994 Act, paragraph 19 above). The compensation which the applicant had received in 1999 constituted full reparation for any damage caused to him as a result of the unauthorised use of his protected work.

27. The Government finally argued that the applicant had not had "possessions" within the meaning of Article 1 of Protocol No. 1 to the Convention, but only claims, which the domestic courts had rejected and which therefore could not be the subject of interference. Were it otherwise, any person lodging a claim before the domestic courts could automatically invoke an interference with his or her Convention rights.



## 2. *The applicant*

28. The applicant submitted that he had had “possessions” within the meaning of Article 1 of Protocol No. 1 to the Convention, since intellectual property rights, according to the jurisprudence of the Court, were included in the above notion. He also considered that an interference with that right had taken place in the light of the unauthorised use of his protected work. He drew certain financial advantages from the use of his work, including when he had received his fees when the photograph was first published in 1985 (see paragraph 7 above) and when he had been awarded compensation in 1999 (see paragraph 13 above).

29. The applicant also considered that he had a legitimate expectation of obtaining compensation for any infringement of his intellectual property rights, since the law provided clearly for such a right. The domestic courts' judgments did not therefore create any property right, which existed by virtue of the law, but only had the function of determining the exact amount of compensation. The refusal to award him any compensation had therefore constituted an interference with his property right. Moreover, the courts had awarded him compensation in 1999 in identical conditions. This confirmed, in the applicant's view, his right to obtain such compensation in the case of any future infringement of his rights.

30. The applicant also considered that the Court of Appeal had interfered with his property rights when it stated, in its judgment of 24 March 1999, that, following the compensation awarded to the applicant for the unauthorised use of the photograph taken by him and because of his failure to request a prohibition on its future unauthorised use, that work was no longer protected by the 1994 Act. He considered that this limitation had not been provided for by law, since section 38 of the 1994 Act provided for the right to claim compensation for past violations and did not refer to on-going breaches. Moreover, the applicant argued that he could not ask for the prohibition of further use of his protected work since the decision to use the photograph taken by him had been adopted by the Government. According to the legislation in force (see paragraph 20 above), an individual could not challenge a Government decision in court unless the decision related specifically to him or her. The decision which included the use of his protected work had been adopted in respect of national identity documents in general and thus had not related to the applicant specifically. Neither did individuals in Moldova have the right to ask the Constitutional Court to review the lawfulness of a Government decision. The applicant finally considered that he had been subjected to an excessive and individual burden as a result of the court judgments.

## B. The Court's assessment

### 1. General principles

31. The Court reiterates that Article 1 of Protocol No. 1 to the Convention does not guarantee the right to acquire property (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX, and *Van der Musselle v. Belgium*, judgment of 23 November 1983, Series A no. 70, p. 23, § 48). Moreover, “an applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions related to his “possessions” within the meaning of this provision. “Possessions” can be either “existing possessions” or assets, including claims, in respect of which the applicant can argue that he or she has at least a “legitimate expectation” of obtaining effective enjoyment of a property right. By way of contrast, the hope of recognition of a property right which it has been impossible to exercise effectively cannot be considered a “possession” within the meaning of Article 1 of Protocol No. 1, nor can a conditional claim which lapses as a result of the non-fulfilment of the condition” (see *Kopecký*, cited above, § 35; *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, §§ 82-83, ECHR 2001-VIII; and *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, § 69, ECHR 2002-VII).

32. The concept of “possessions” referred to in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to ownership of physical goods and is independent from the formal classification in domestic law: certain other rights and interests constituting assets can also be regarded as “property rights”, and thus as “possessions” for the purposes of this provision. The issue that needs to be examined in each case is whether the circumstances of the case, considered as a whole, confer on the applicant title to a substantive interest protected by Article 1 of Protocol No. 1 (see *Iatridis v. Greece*, [GC], no. 31107/96; *Beyeler v. Italy* [GC], no. 33202/96, § 100, ECHR 2000-I; *Broniowski v. Poland* [GC], no. 31443/96, § 129, ECHR 2004-V; and *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 63, ECHR 2007-...).

33. In certain circumstances, a “legitimate expectation” of obtaining an “asset” may also enjoy the protection of Article 1 of Protocol No. 1 to the Convention. Thus, where a proprietary interest is in the nature of a claim, the person in whom it is vested may be regarded as having a “legitimate expectation” if there is a sufficient basis for the interest in national law, for example where there is settled case-law of the domestic courts confirming its existence (see *Kopecký*, cited above, § 52). However, no legitimate expectation can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and the applicant's

submissions are subsequently rejected by the national courts (see *Kopecký*, cited above, § 50).

2. *Application of these principles to the present case*

(a) **Whether the applicant had “possessions”**

34. The Court reiterates that Article 1 of Protocol No. 1 is applicable to intellectual property (see *Anheuser-Busch Inc.*, cited above, § 72). In the present case, the Court notes that the applicant's rights in respect of the photograph he had taken were confirmed by the domestic courts (see paragraphs 10, 17 and 18 above). Therefore, unlike in the above-cited judgment of *Anheuser-Busch Inc. v. Portugal*, there was no dispute in the present case as to whether the applicant could claim protection of his intellectual property rights. In this connection, the Court takes note of the applicant's submission (see paragraph 29 above) that he asked the courts to protect his already established right over the protected work by awarding him compensation, and not to establish his “property right” over such compensation. He had, in the Court's opinion, a right recognised by law and by a previous final judgment (see paragraph 13 above), and not merely a legitimate expectation of obtaining a property right.

35. The Court notes that the Supreme Court of Justice decided, on 16 October 2002, that identity cards were official documents within the meaning of section 7 of the 1994 Act and could not be subject to the applicant's intellectual property rights (see paragraphs 16, 18 and 19 above). However, the court only referred to identity cards and not to the photograph taken by the applicant, in respect of which there was no dispute. Moreover, section 4 of the 1994 Act expressly distinguishes between the author's rights in respect of works created by him or her and the property right over the material object in which that creation is embodied (see paragraph 19 above). It follows that the finding of the Supreme Court of Justice that identity cards could not be subject to copyright had no bearing on the applicant's rights in respect of the photograph he had taken. This finding is confirmed by the fact that the domestic courts found, in the first set of proceedings, that the applicant's rights had been infringed. The courts awarded him compensation despite the Ministry's use of the photograph in an identical manner both before and after 1999, that is as a background for identity cards.

36. In view of the above, the Court concludes that the applicant had a “possession” within the meaning of Article 1 of Protocol No. 1 to the Convention.

(b) **Whether there has been interference**

37. The Court also notes the Government's position that the domestic courts had relied on legislation which was not applicable to the applicant's

case (see paragraph 25 above). However, the Court reiterates that it is not its task to take the place of the national authorities who ruled on the applicant's case. It primarily falls to them to examine all the facts of the case and set their reasons out in their decisions. In the present case, the Court does not see any reason for questioning the domestic courts' application of a law adopted specifically to regulate intellectual property rights issues and which came into force before the alleged violation of the applicant's rights.

Accordingly, the Government's new reasons, which were raised for the first time in the proceedings before the Court, are irrelevant (see, *mutatis mutandis*, *Sarban v. Moldova*, no. 3456/05, § 102, 4 October 2005). The Court will therefore examine the case on the basis of the law as applied by the domestic courts.

38. In so far as the judgment of the Supreme Court of Justice is to be interpreted as meaning that, because of the applicant's failure to ask the courts for a prohibition on the unauthorised use of his protected work, such use after the 1999 judgment did not interfere with his possessions for the purposes of Article 1 of Protocol No. 1, the Court is unable to accept this view. The Court notes that section 25 (1) of the 1994 Act states in unequivocal terms that "the use of ... artistic works in breach of the copyright of their authors is unlawful". The illegal character of unauthorised use is not conditioned in the law by any particular act of the copyright owner, such as a request for a court injunction against such use. The finding of a violation of the applicant's rights in the 1999 judgment confirms this.

39. Moreover, it cannot be said, as argued by the Government, that the applicant tacitly accepted the use of his protected work without remuneration. On the contrary, by lodging a new court action he clearly expressed his view that such use was in violation of his rights. Moreover, the fact that he consistently claimed the protection of his right by asking the Ministry to conclude a contract with him and to pay him author's fees or compensation (see paragraphs 10 and 15 above) is evidence of the fact that he has continuously opposed unauthorised use of his protected work. It follows that the applicant's failure to request the prohibition of the unauthorised use of his work by the Ministry could not make such use lawful as unauthorised use was expressly prohibited by law and was opposed by the applicant.

40. In the light of the above, the Court finds that there has been interference with the applicant's property rights within the meaning of Article 1 of Protocol No. 1 to the Convention.

**(c) Whether the interference was "lawful"**

41. The Court further notes that the 1994 Act does not provide for the termination of an author's rights by virtue of his or her failure to ask the courts to prohibit the use of his protected work. The only means of extinguishing the author's right is a contract with the author or his or her

successors (see sections 19 and 24 of the 1994 Act, cited in paragraph 19 above), while the author's "moral rights" can never be transmitted to third persons (see section 9 of the 1994 Act, cited in paragraph 19 above). In addition, it is for the author of a protected work to decide which of the penalties provided by law he or she wants to apply in case of an infringement of his or her rights under the 1994 Act (see section 38 of the 1994 Act, cited in paragraph 19 above).

42. The Court notes that neither the domestic courts nor the Government referred to any specific provision in the 1994 Act which expressly provides for the termination of an author's rights in respect of his or her creation by virtue of a failure to prohibit its unauthorised use. Section 38 of the 1994 Act, cited above, refers to the right to ask for the prohibition of the unlawful use but does not attach any negative consequences to a failure to do so.

43. The Court also notes the discrepancies in the manner in which the domestic authorities interpreted the 1994 Act in the first proceedings (see paragraph 13 above) and the second proceedings (see paragraphs 17 and 18 above), even though they decided on essentially the same legal situation. Moreover, the Government considered that the 1994 Act did not apply at all in the applicant's case, contrary to the position of the domestic courts. This suggests that the 1994 Act had not been sufficiently foreseeable in its application and this in itself might be a sufficient basis for the conclusion that the interference was not "lawful". However, the Court does not consider it necessary finally to decide this issue, having regard to its conclusions set out below.

**(d) Purpose and lawfulness of the interference**

44. Even assuming that the 1994 Act was sufficiently foreseeable in its application, the Court must determine whether the interference with the applicant's rights was proportionate to the aims pursued. The Court notes the applicant's argument that he could not prevent infringement of his rights since he had no standing to challenge in court the Government decision which had enabled the unlawful use of his protected work (see paragraphs 8, 20 and 30 above). The Government did not comment on this. The Court considers that it does not have to take a definitive view on this issue in view of its findings below.

45. The Court accepts that issuing identity cards to the population serves an undoubtedly important public interest. However, it is apparent that this socially important aim could have been reached in a variety of ways not involving a breach of the applicant's rights. For instance, another photograph could have been used or a contract could have been concluded with the applicant. The Court is unaware of any compelling reason for the use of the particular photograph taken by the applicant or of any impediments to the use of other materials for the same purpose. Indeed, the photograph taken by the applicant was no longer used as a background in

identity cards after 1 May 2000, which confirms that the public interest could be served without violating the applicant's rights.

46. It follows that the domestic courts failed to strike a fair balance between the interests of the community and those of the applicant, placing on him an individual and excessive burden. There has, accordingly, been a violation of Article 1 of Protocol No. 1 to the Convention.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicant claimed 20,267 euros (EUR) for pecuniary damage and EUR 5,000 for non-pecuniary damage. He relied on the award of damages made by the Chişinău Regional Court on 6 November 2001 (see paragraph 16 above) and the period (three years) during which he had not been able to use that amount. He also referred to the frustration caused to him by the use of his work without authorisation and the refusal to compensate him. Having seen the photograph he had taken widely used in Government-issued documents, he expected fair compensation and was bitterly disappointed when that was refused.

49. The Government submitted that the award made on 6 November 2001 was irrelevant, since that judgment had been quashed and the applicant had had no expectation of obtaining that amount. Moreover, the judgment of 24 March 1999, which had been upheld in respect of the award in favour of the applicant (see paragraphs 10 and 13 above), had constituted full compensation for any damage caused to the applicant. They argued that no damage had been caused to the applicant, who did not submit any evidence that he had derived any profit or otherwise benefited from his authorship of the photograph he had taken.

50. The Court considers that the applicant must have been caused damage as a result of the infringement of his rights in respect of the photograph he had taken and the refusal of the domestic courts to award compensation for that violation, the more so seeing that the photograph had been reproduced on a large scale (see paragraph 15 above), despite the authorities' awareness of the unlawful character of such use. Moreover, the Court finds that the award in the applicant's favour made in 1999 (see paragraphs 10 and 13 above) compensated him only for the infringement of

his rights prior to the initiation of the 1999 proceedings and not for the subsequent use of the photograph taken by him.

51. In the light of the above and deciding on an equitable basis, the Court awards the applicant EUR 5,000 for pecuniary and non-pecuniary damage.

### **B. Costs and expenses**

52. The applicant claimed EUR 2,872 for costs and expenses, of which EUR 2,812 for legal representation before the Court. The applicant's lawyer submitted a contract with the applicant and a detailed time sheet according to which he had spent 37.5 hours. As to the hourly fee of EUR 75, the lawyer argued that it was within the limits of the hourly rates recommended by the Moldovan Bar Association, which were EUR 40-150.

53. The Government disagreed with the amount claimed for representation. They considered it excessive and argued that the amount claimed by the lawyer was not the amount actually paid to him by the applicant. They disputed the number of hours worked by the applicant's lawyer and the hourly rate he charged. They also argued that the rates recommended by the Moldovan Bar Association were too high in comparison to the average monthly salary in Moldova and referred to the non-profit nature of the organisation Lawyers for Human Rights.

54. In the present case, regard being had to the itemised list submitted and the complexity of the case, the Court awards the applicant EUR 2,000 for costs and expenses.

### **C. Default interest**

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

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
    - (i) EUR 5,000 (five thousand euros) in respect of pecuniary and non-pecuniary damage;
    - (ii) EUR 2,000 (two thousand euros) in respect of costs and expenses;
    - (iii) any tax that may be chargeable on the above amounts;
  - (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 29 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early  
Registrar

Nicolas Bratza  
President