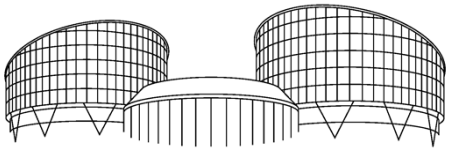

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF O'LEARY v. IRELAND

(Application no. 45580/16)

JUDGMENT

STRASBOURG

14 February 2019

This judgment is final but it may be subject to editorial revision.

In the case of O'Leary v. Ireland,

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

Lətif Hüseynov, *President,*
Síofra O'Leary,
Lado Chanturia, *judges,*
and Milan Blaško, *Deputy Section Registrar,*

Having deliberated in private on 22 January 2019,

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

PROCEDURE

1. The case originated in an application (no. 45580/16) against Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Irish national, Mr Alan O'Leary ("the applicant"), on 2 August 2016. As he lacks legal capacity, the applicant was represented before the Court by his sister and guardian, Ms Charlene O'Leary.

2. The applicant was legally represented by Denis O'Sullivan & Co. Solicitors, a law firm in Cork. The Irish Government ("the Government") were represented by their Agent, Mr P. White of the Department of Foreign Affairs and Trade.

3. On 30 August 2017 notice of the complaints concerning the length of the proceedings and the lack of remedies in that respect was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1986 and lives in Cork.

5. He suffers from severe brain damage. It was asserted on his behalf that his condition was caused by the measles vaccination administered to him in 1988 when he was 15 months old.

6. In November 2002, 14 years after receiving the vaccine, the applicant's mother instituted proceedings on his behalf against four defendants; the local health authority, the State, the Attorney General (collectively described in the domestic proceedings as the State defendants) and the doctor who had administered the vaccination, H.

7. On 5 August 2003, the High Court issued a limited order of discovery addressed to the local health authority seeking all relevant records about the applicant in its possession, as well as information about the vaccine used, about any adverse effects noted at the time with this vaccine, about the manner in which the mother's consent was obtained, and about the health of the other members of the applicant's family. Although the High Court set a time-limit of 8 weeks for discovery, the local health authority only complied with the order in June 2008, that is to say with a delay of over four and a half years.

8. The applicant appealed the scope of the order of discovery of 5 August 2003, leading to the grant of a further limited order of discovery by the High Court on 30 January 2004, addressed to all four defendants. The applicant brought another appeal against the order of discovery of 30 January 2004, but in July 2006 the Supreme Court dismissed the appeal, making only a minor amendment to the order granted by the High Court.

9. The applicant's mother died in December 2007.

10. In June 2008 the applicant's lawyer wrote to the local health authority to complain that the long delays in litigating the case had caused grave prejudice to the case. The applicant's mother had been a vital witness, and with her death essential evidence had been lost. Settlement of the substantive dispute was proposed but not agreed.

11. In May 2008 the applicant's lawyer sought to have the defence of the State defendants set aside. The High Court refused this application on 12 March 2010.

12. The trial involved ten days of hearings. No factual evidence was called on behalf of the applicant, but independent medical witnesses gave evidence, having read the applicant's medical records, and documentary evidence provided by way of discovery was before the court. On the eleventh day of the trial, 19 July 2011, the judge accepted an application by the defendants to strike the case out for failure to establish a *prima facie* case against them.

13. Regarding the doctor, he noted that the applicant accepted there was insufficient evidence to establish any negligence in the administration of the vaccine. The claim against the doctor H was dismissed. In relation to the State defendants, the judge held that no evidence had been produced that could support the various grounds relied on by the applicant.

14. The proceedings in the High Court terminated on 19 December 2011. The applicant filed a notice of appeal presenting 30 grounds of appeal. Following the establishment of the Court of Appeal in October 2014, the applicant's case was transferred to it. Outline written submissions were submitted by H in February 2015 and by the State defendants in September 2015.

15. The Court of Appeal gave its judgment on 10 February 2016, dismissing the appeal. In its conclusions, the Court of Appeal stated that, by

taking the case at its highest, the trial judge had adopted the correct approach on the question of striking the case out. The Court of Appeal concluded by remarking on the many legal hurdles the applicant would have had to overcome in order to succeed. It found no basis for overturning the decision of the High Court.

16. The proceedings ended on 10 May 2016 when the Supreme Court declined the applicant's request for leave to appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. On 24 October 2016 the Supreme Court gave judgment in the case of *Nash v. D.P.P.* ([2016] IESC 60) in which the appellant claimed that there had been excessive delay in the criminal proceedings brought against him and sought an award of damages. The Supreme Court addressed the possibility of claiming damages where legal proceedings are not completed within a reasonable time. The judgment referred first to the possibility of a claim for damages under the European Convention on Human Rights Act, 2003, which may be sought only if no other remedy in damages is available.

18. The Supreme Court then considered the constitutional basis for a claim in damages. The judgment set out that

> "2.8 It is, therefore, clear that the constitutional right to a timely trial has been well established for many years. Given that it has also been clear that, in an appropriate case, damages can be awarded for the breach of a constitutional right, it has been clearly established for some time in our jurisprudence that there is, at least at the level of principle and in some circumstances, an entitlement to damages for breach of the constitutional right to a timely trial. However, just as in the case of a claim for damages for breach of the similar right guaranteed by the ECHR, there may well be questions as to the precise circumstances in which such an entitlement to damages may arise."

THE LAW

I. ADMISSIBILITY OF THE COMPLAINTS

19. The applicant complained that the length of proceedings in his case had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention. He further complained under Article 13, in connection with the Article 6 complaint, that there was no effective remedy in the domestic system.

20. Article 6 § 1 of the Convention reads as follows:

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

21. Article 13 of the Convention reads as follows:

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

22. The Government submitted that the complaint was inadmissible for non-exhaustion, arguing that the applicant had not pursued various means at his disposal to expedite the proceedings at certain points. Further, the Government submitted that the applicant had not pursued domestic remedies for his complaint as to the overall delay in the proceedings, referring to the decision of the Supreme Court in *Nash v. D.P.P.* The applicant rejected the Government's arguments and maintained that no effective remedy had been available to him.

23. As stated at paragraph 26 in *Healy v. Ireland,* no. 27291/16, 18 January 2018, the Court recalls that the issue of whether the applicant availed of the means at his disposal to expedite the proceedings goes to the substance of the complaint under Article 6 § 1. It will therefore examine it below.

24. Regarding the availability of a constitutional remedy in damages, the Court recalls that the domestic decisions made in the proceedings predated the clarification provided by the decision in *Nash*. In these particular circumstances, and given the close affinity between the requirement under Article 35 § 1 to exhaust domestic remedies and the right under the Convention to an effective remedy (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI), the issue of exhaustion will be joined to the merits of the complaint under Article 13.

25. Accordingly, the Court notes that these complaints are not manifestly ill-founded or inadmissible on any other grounds, and must therefore be declared admissible.

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

A. The parties' submissions

1. The applicant

26. The applicant submitted that the length of the domestic proceedings from commencement of the action in November 2002 to determination of the application for leave to appeal on 10 May 2016 had been excessive (around thirteen years and six months in total). In particular, he pointed to several discrete periods of delay.

27. Firstly, he asserted that the local health authority had not complied with order of discovery of the Deputy Master in the High Court dated 5 August 2003 and the order of discovery of the High Court on 30 January 2004 until June 2008 (a duration of around four years and ten months).

Secondly, he complained that the period of two years and six months from January 2004 to July 2006 for the determination of an appeal and cross-appeal to the Supreme Court in respect of the order of discovery made in January 2004 was excessive and unreasonable. Thirdly, he complained that the period of twenty months from the issue of a motion seeking the defence of the State defendants to be set aside in May 2008 until its determination in March 2010 was excessive. Finally, he claimed that the period of four years for the appeal of the final order dated 19 December 2011 dismissing his case to be heard, and a further four months until delivery of the judgment of the Court of Appeal on 10 February 2016 was excessive and unreasonable.

28. The applicant clarified that after the High Court had made an order of limited discovery on 5 August 2003, additional discovery was ordered on appeal on 30 January 2004. While that order was further appealed to the Supreme Court, and was not determined until 21 July 2006, the applicant submitted that the judicially imposed duty on several of the State defendants to provide the discovery ordered had existed since at the latest January 2004 and that no stay on the orders had been in place.

29. The applicant submitted that the Supreme Court, on determining the appeal of the order of discovery on 21 July 2006, had ordered that the outstanding discovery be made by the State defendants within sixteen weeks from the date of the order. However, discovery was not made until June 2008.

30. The applicant refuted the submission of the Government that the complexity of the litigation had justified the length of time taken to comply with the orders of discovery made. He pointed out that the Government had alleged during the domestic proceedings that his case was entirely devoid of merit.

31. In response to the Government's assertion that his delay in filing written submissions in respect of the appeal against the orders of discovery and the High Court decision of 19 December 2011 significantly impeded the progress of those matters, the applicant rejected this proposition. He submitted that he had correctly followed the relevant procedural rules in respect of both appeals.

32. The applicant maintained that the establishment of the Court of Appeal could not be relied upon by the Government to justify the delay in hearing his appeal against the High Court decision.

2. The Government

33. The Government did not accept that there was delay by the local health authority in complying with the first order of discovery. The orders of discovery of 5 August 2003 and 30 January 2004 had not in fact been 'finalised' until after an appeal to the Supreme Court which resulted in an amended order of discovery dated July 2006. In this respect, the

Government asserted that the applicant's view that discovery ought to have been made pending appeal was unrealistic and impractical.

34. They also pointed to the scale, complexity, geographical and historical span of the discovery required. The Government further noted that the local health authority was replaced by and incorporated into a new national institution (the Health Service Executive) in 2004, exacerbating the difficulties it faced in making discovery.

35. It was submitted on behalf of the Government that the applicant bore considerable responsibility for the length of the proceedings. In particular, while the applicant had lodged an appeal of the order of discovery of 30 January 2004 that same year, he had not filed complete books of appeal and submissions until June 2006.

36. The Government asserted that the applicant did not take any steps to further the proceedings between June 2008 and March 2010, when an application to set aside the defence of the State defendants was heard.

37. With respect to the appeal of the High Court decision of 19 December 2011, the Government submitted that the applicant had failed to pursue the appeal with reasonable diligence as he had not filed his submissions until 1 July 2014, when he also made a successful application for priority.

38. The Government submitted that matters were then overtaken by the establishment of the Court of Appeal in October 2014, with the appeal being heard one year later in October 2015 and judgment being delivered on 10 February 2016. The Government considered that no delay relating to the conduct of the appeal had been attributable to the State.

B. The Court's assessment

39. The Court notes that the proceedings commenced in November 2002 and terminated on 10 May 2016. The overall duration was therefore thirteen years and 6 months over three levels of jurisdiction.

40. The reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case, which call for an overall assessment, with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII, and *Superwood Holdings Plc and Others v. Ireland*, no. 7812/04, § 34, 8 September 2011).

41. The Court reiterates that a temporary backlog of court business does not entail a Contracting State's international liability if it takes appropriate remedial action with the requisite promptness. However, according to the Court's established case-law, a chronic overload of cases within the domestic system cannot justify an excessive length of proceedings

(*Probstmeier v. Germany*, 1 July 1997, § 64, *Reports of Judgments and Decisions* 1997-IV), nor can the fact that backlog situations have become commonplace (*Unión Alimentaria Sanders S.A. v. Spain*, 7 July 1989, § 40, Series A no. 157, *Mikuljanac and Others v. Serbia*, no. 41513/05, § 39, 9 October 2007). The Court has also recognised that in civil proceedings the principal obligation for progressing proceedings lies on the parties themselves, who have a duty to diligently carry out the relevant procedural steps (*Healy v. Ireland,* no. 27291/16, § 55, 18 January 2018).

42. The Court does not consider that the proceedings involved particularly complex issues of law. Whilst the hearing before the High Court lasted for ten days, no factual evidence was called on behalf of the applicant and his claim rested exclusively on the evidence of two independent expert medical witnesses as well as certain documentary materials provided by way of discovery. At the conclusion of this evidence, the defendants successfully made an application for an order dismissing the proceedings on the basis that a *prima facie* case had not been made out against them.

43. With regard to the orders of discovery made in 2003 and 2004, the Court notes the applicant's submission that the duty to make discovery existed from at latest 30 January 2004. However the appeal of the order of January 2004 was not disposed of until 12 July 2006 by the Supreme Court after an application for priority listing was made by the applicant. The Court considers that a waiting duration of over two years to hear a straightforward interlocutory appeal concerning discovery was excessive.

44. Compliance with the orders of discovery within four months of 21 July 2006 was somewhat onerous due to the historical time span and breadth of documents referred to. However, the State defendants had been aware of the nature of the discovery to be provided since 2003. The delay in providing the discovery, from the Supreme Court order of 21 July 2006 until June 2008, cannot be justified. The Court considers that the delay of a year and seven months in this regard should be attributed to the State.

45. The applicant acted at times with diligence during the proceedings, making an application for priority listing of the appeal against the orders of discovery which led to listing before the Supreme Court shortly thereafter. However, his application for the State defence to be set aside was not made until May 2008 (shortly before the discovery was in fact provided). The Court also notes that this application referred only to the failure of the State defendants to comply with the order of discovery of July 2006, but not the earlier orders of August 2003 and January 2004.

46. Further, despite his expressed concern about delay in correspondence in June 2008, the applicant did not make an application for priority listing of the application, which was heard and dismissed by the High Court in March 2010. The Court considers that the applicant could have been more diligent in availing of procedural mechanisms to avoid further delay in this respect. However, the delay in listing the set aside

application of one year and ten months in the context of proceedings which had already been ongoing at that point for over seven years cannot be justified and must be at least partially attributed to the State.

47. The Court considers, with respect to the Government's submission that the applicant had not used the means at his disposal to expedite the proceedings (see paragraph 23 above), that the applicant did avail of certain measures to prevent further delay in the proceedings at certain times (such as a request for priority listing). While he did not make this request at every opportunity in the proceedings, it is clear from the foregoing observations that the applicant generally sought to progress matters, and that delay prior to hearing of the matter had occurred notwithstanding these efforts.

48. Regarding the appellate stage of the proceedings, the large backlog before the Supreme Court from the end of 2011 until October 2014 caused a lengthy period of inactivity before the appeal was transferred to the caseload of the newly-created Court of Appeal. The Court recalls its previous assessment of the judicial situation in Ireland during that time in *Healy* at paragraph 61 to 62 and notes that:

> "the creation of the Court of Appeal represented a significant modification of the domestic legal system, involving amendment of the Constitution by referendum, the passage of legislation and the allocation of the necessary resources to the new court ..."

49. Once the applicant's appeal had been transferred to the Court of Appeal, it was heard one year later and a lengthy judgment was delivered four months after the hearing, on 10 February 2016. The Court considers that the Court of Appeal dealt with the appeal with diligence. Further, the Supreme Court determined the applicant's request for leave to appeal to that court without delay and within three months of the Court of Appeal's decision.

50. Nonetheless, the delay and inactivity at the appellate stage between December 2011 and October 2014 for a period of almost three years cannot be ignored, as it constituted a not insignificant period of the overall proceedings which had already been characterised by a lack of expedition in the High Court. In this respect, the situation can be distinguished from that in *P.H. v. Ireland* (dec.) [Committee], no. 45046/16, 2 November 2017 wherein a period of inactivity of two years and nine months at the appellate stage until transfer to the Court of Appeal was not considered unreasonable, in circumstances where no delay was apparent at first instance level.

51. The Court also recalls that in *Healy* it decided that a period of inactivity lasting more than four years at the appellate stage before transfer to the Court of Appeal was excessive, notwithstanding its recognition of the clear benefit of the creation of the Court of Appeal for the applicant's case and the efforts on the part of the respondent State to overcome structural deficiencies in its legal system. Accordingly, the Court finds in respect of

the applicant that the delay of almost three years at the appellate level was not reasonable and was attributable to the State.

52. The Government submitted that the failure of the applicant to submit books of appeal and submissions until June 2006 had delayed the determination of the appeal concerning discovery orders. The Court is not however persuaded either that the applicant omitted to submit documents on time or that any delay in submission affected the date of listing of the appeal, particularly as it appears that the hearing was precipitated by the applicant's application for priority listing in June 2016. Similarly, the Court is not persuaded by the argument of the Government that the applicant had failed to pursue his appeal with reasonable diligence as he did not file his submissions until July 2014, given the impending transfer of the case to the Court of Appeal's list was necessary due to the backlog experienced in the legal system at that time.

53. The Court notes four separate periods of delay in the proceedings:

(1) between January 2004 and July 2006 when the interlocutory appeal was pending;

(2) between July 2006 and June 2008 caused by the failure of the local health authority to provide discovery;

(3) between June 2008 and March 2010 when the set aside application was pending but little other progress was made, attributable in part to both the applicant and the respondent State; and

(4) the inactivity at appellate stage between December 2011 and October 2014 pending the creation of the Court of Appeal.

54. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

56. The applicant complained that he had no effective remedy in relation to the allegedly excessive duration of the proceedings in his case.

A. The parties' submissions

1. The applicant

57. The applicant submitted there is no remedy available in domestic law for breach of Article 6 § 1 of the Convention caused by delay on the part of the judiciary or the court's system.

58. He submitted that the *Nash* judgment was irrelevant for the purposes of a remedy for breach of Article 6 § 1 of the Convention as required by

Article 13 because any possible constitutional cause of action would be rather in respect of a breach of a constitutional right of undefined content.

2. The Government

59. The Government submitted that, firstly, there existed a domestic remedy for breach of the Convention in section 3(2) of the European Convention on Human Rights Act, 2003. Further, the Government submitted that there is a constitutional entitlement to a damages remedy for delay in the conduct of judicial proceedings, confirmed and affirmed by the recent *Nash* judgment.

B. The Court's assessment

60. The Court recalls its assessment in the *Healy* judgment at paragraphs 69 to 72 as follows:

> "69. The Court recalls that as from its judgment in *Doran v. Ireland*, no. 50389/99, ECHR 2003-X (extracts) it has consistently found the domestic legal system to lack a remedy for complaints of excessive length of proceedings. The objection of non-exhaustion of domestic remedies could not therefore be raised in such cases, and the Court found a violation of Article 13 each time such a complaint was raised in conjunction with Article 6 § 1 (see as the most recent example involving civil proceedings *Rooney v. Ireland*, no. 32614/10, 31 October 2013). More recently again, the Court struck out an application in light of the respondent Government's acceptance, in a unilateral declaration dated 19 January 2017, that "the length of the proceedings and the lack of an effective remedy in that regard was incompatible with the reasonable time requirement contained in Article 6(1) and Article 13 of the Convention" (see *Blehein v. Ireland* (dec.) [Committee], no. 14704/16, 25 April 2017). It therefore takes note with interest of this first example brought to its attention of an action in damages for excessive length of proceedings, and of the Supreme Court's analysis of this issue in light of the relevant principles of the Constitution and the Convention.
>
> 70. However, it must be recalled that, according to the Court's well-established case-law, the effectiveness of a remedy is normally assessed with reference to the date on which the application was lodged (see *Valada Matos das Neves v. Portugal*, no. 73798/13, § 102, 29 October 2015, with further references). Given the close affinity between Article 35 § 1 and Article 13, the same approach must be taken under the latter provision (see *Casse v. Luxembourg*, no. 40327/02, § 66, 27 April 2006).
>
> 71. The present application was introduced on 12 May 2016. It is clear that at that point in time there was no basis to reconsider the Court's conclusion regarding the inexistence of a remedy in domestic law for length of proceedings, the Supreme Court's decision in *Nash* coming more than five months later on 24 October 2016, and indeed following communication of the application.
>
> 72. It is true that the Court has approved a number of exceptions to this rule, justified by the specific circumstances of the cases in question. This refers in particular to the enactment of new legislation by States to remedy the systemic problem of length of judicial proceedings (see the cases referred to in *Valada Matos das Neves*, cited above, at § 102). Where the change in domestic law comes about

through case-law, the Court's approach has been, for reasons of fairness, to allow a certain time for applicants to familiarise themselves with the new jurisprudence, the exact period depending on the circumstances of each case, especially the publicity given to the decision in question (ibid., §§ 104-105). Periods ranging from one and a half months (see *Poulain v. France* (dec.), no. 16470/15, § 29, 21 March 2017) to eight months (see *Leandro Da Silva v. Luxembourg*, no. 30273/07, § 50, 11 February 2010) have been allowed. It follows that even were the Court to modify its assessment of the domestic system in this regard, this would not have any bearing on its conclusion on the complaint raised in the present case. Accordingly, the Court will refrain on this occasion from determining the significance of the *Nash* decision for the purposes of Articles 35 § 1 and 13."

61. The final domestic decision in the present proceedings was made on 10 May 2016 and the application was lodged on 2 August 2016. The *Nash* judgment was delivered more than two months later, on 24 October 2016. While the present application differs from *Healy* in one respect in that it was communicated after the *Nash* judgment, nonetheless, there was equally no basis at the time of the final decision or before the application was lodged to reconsider the Court's conclusion regarding inexistence of a remedy in domestic law for length of proceedings.

62. The Court considers on this basis that it is not appropriate to consider in the context of this application the significance of the *Nash* judgment for the purposes of Articles 35 § 1 and 13.

63. In light of the foregoing, the Court finds that there has been a violation of Article 13, in conjunction with Article 6 §1 of the Convention, and, consequently, dismisses the Government's objection as to the applicant's failure to exhaust domestic remedies.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The applicant requested the Court to award him such amount as it deemed appropriate for non-pecuniary loss arising out of the violation of his rights under Articles 6 § 1 and 13.

66. The Government did not propose to suggest a figure for non-pecuniary loss, should an award be made by the Court, noting that the assessment would be on an equitable basis having regard to the sums granted in similar cases.

67. The Court considers that the violation of Article 6 § 1 pertains in particular to those parts of the proceedings identified at paragraph 53 above, while recognising that certain periods of delay were also attributable to the applicant (see paragraphs 45 to 47 and 53(3) above). Considering that the applicant must have sustained non-pecuniary damage, and ruling on an equitable basis, the Court awards him EUR 7,000 under this head of damage.

B. Costs and expenses

68. The applicant claimed a total of EUR 5,083 in legal fees incurred before the Court. This comprised EUR 2,500 charged by counsel for 10 hours of work at a rate of EUR 250 per hour. The remainder comprised EUR 2,583 charged by his solicitor, for 7 hours of work at a rate of EUR 300 per hour, plus VAT.

69. The Government did not express an opinion on the matter.

70. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 4,000.

C. Default interest

71. 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. *Decides* to join to the merits of the complaint under Article 13 the Government's objection concerning the non-exhaustion of domestic remedies, and rejects it;

2. *Declares* the complaint concerning Article 6 § 1 and the related complaint under Article 13 admissible;

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

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

5. *Holds*

(a) that the respondent State is to pay the applicant, within three months, the following amounts:

(i) EUR 7,000 (seven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 4,000 (four 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.

Done in English, and notified in writing on 14 February 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Lətif Hüseynov
President