CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF ISMAYILOV v. AZERBAIJAN

(Application no. 4439/04)

JUDGMENT

STRASBOURG

17 January 2008

FINAL

17/04/2008

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 Ismayilov v. Azerbaijan,

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

Christos Rozakis, *President,*
Loukis Loucaides,
Nina Vajić,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 11 December 2007,

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

PROCEDURE

1. The case originated in an application (no. 4439/04) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Azerbaijani national, Mr Ismayil Asgar oglu Ismayilov (*İsmayıl Əsgər oğlu İsmayılov* – "the applicant"), on 30 December 2003.

2. The applicant, who had been granted legal aid, was represented by Ms L. Madatova, a lawyer practising in Baku. The Azerbaijani Government ("the Government") were represented by their Agent, Mr C. Asgarov.

3. The applicant alleged that the significant delays in the state registration of the public association of which he was a founder amounted to a violation of his right to freedom of association, that the domestic courts were not independent and impartial, and that the domestic remedies were not effective in lawsuits filed by public associations against the Ministry of Justice of Azerbaijan.

4. On 30 November 2006 the President of the Chamber decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, the Court 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 1947 and lives in Baku.

6. The applicant was one of the founders of an association named "Humanity and Environment" (*"İnsan və Mühit" İctimai Birliyi*), established on 6 September 1999.

7. On 30 September 1999 the founders applied to register the association with the Ministry of Justice ("the Ministry"), the government authority responsible for the state registration of legal entities. In accordance with the domestic law, a non-governmental organisation acquires the status of a legal entity only upon its state registration by the Ministry.

8. On 11 February 2000, approximately four and a half months after the date of application for registration, the Ministry returned the registration documents to the founders without taking any action, that is without issuing either a state registration certificate or an official refusal to register the association. The Ministry noted that the association's charter did not comply with Article 1 of the Law on Public Associations of 10 November 1992.

9. The founders redrafted the charter in line with the Ministry's comments and on 24 July 2000 reapplied for state registration, submitting a new version of the charter. On 28 December 2000 the Ministry responded with another refusal, stating that the charter provisions concerning the association's members were not in compliance with Article 10 of the Law on Non-Governmental Organisations (Public Associations and Funds) of 13 June 2000 ("the NGO Law").

10. The applicants again revised the charter and on 28 August 2002 submitted their third registration request.

11. Having not received any response to their third registration request, on 25 October 2002 the founders lodged an action, complaining that the Ministry "evaded" registering their organisation within the time-limits specified by law and asking the court to oblige the Ministry to register it. They also demanded compensation for non-pecuniary damage. On 2 December 2002 the Yasamal District Court dismissed the founders' claim, finding nothing unlawful in the actions of the Ministry. The court found that the association's charter had not been drafted in accordance with the requirements of the domestic law. The founders lodged an appeal against this judgment with the Court of Appeal.

12. In the meantime, on 6 December 2002 the Ministry again returned the registration documents to the founders. This time the reason for declining the registration was the founders' failure to include in the charter the conditions for terminating membership of the association, as required by Article 13 of the NGO Law.

13. On 22 May 2003 the Court of Appeal upheld the judgment of the Yasamal District Court. On 5 November 2003 the Supreme Court upheld the lower courts' judgments dismissing the founders' claim.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. State registration of non-governmental organisations

14. The Civil Code of the Republic of Azerbaijan of 2000 provides as follows:

Article 47. Charter of a legal entity

"47.1. The charter of a legal entity approved by its founders is the legal entity's foundation document. ...

47.2. The charter of a legal entity shall set out the name, address, procedure for management of activities and procedure for liquidation of the legal entity. The charter of a non-commercial legal entity shall define the object and purpose of its activities. ..."

Article 48. State registration of legal entities

"48.1. A legal entity shall be subject to state registration by the relevant executive authority. ...

48.2. A violation of the procedure of a legal entity's establishment or non-compliance of its charter with Article 47 of the present Code shall be the grounds for refusal to register the legal entity. ..."

15. The Law on State Registration of Legal Entities of 6 February 1996 provides as follows:

Article 9. Review of an application [for state registration]

"Upon receipt of an application for state registration from a legal entity or a branch or representative office of a foreign legal entity, the authority responsible for state registration shall:

– accept the documents for review;

– within ten days, issue to the applicant a state registration certificate or a written notification of refusal to register; or

– review the documents resubmitted after rectification of the breaches previously existing therein and, within five days, take a decision on state registration."

16. The Law on Non-Governmental Organisations (Public Associations and Funds) of 13 June 2000 provides as follows:

Article 16. State registration of non-governmental organisations

"16.1. The state registration of non-governmental organisations shall be carried out by the relevant executive authority in accordance with the laws of the Republic of Azerbaijan on state registration of legal entities.

16.2. Non-governmental organisations shall acquire the status of a legal entity only after achieving state registration."

Article 17. Refusal of state registration

"17.1. Non-governmental organisations can be refused registration only if there is another organisation existing under the same name, or if the documents submitted for registration contravene the Constitution of the Republic of Azerbaijan, this law and other laws of the Republic of Azerbaijan, or contain false information.

17.2. Decision on refusal of state registration shall be presented in writing to the representative of the non-governmental organisation, with indication of the grounds for refusal as well as the provisions and articles of the legislation breached upon preparation of the foundation documents.

17.3. Refusal of registration shall not prevent the organisation from resubmitting its registration documents after rectification of the breaches.

17.4. A decision on refusal of state registration may be challenged in court."

B. Additional cassation procedure in civil proceedings

17. For the summary of the relevant domestic law and practice concerning requests for the reopening of the domestic civil proceedings and review of the final decision by the Plenum of the Supreme Court under the procedure of additional cassation, see *Babayev v. Azerbaijan* ((dec.), no. 36454/03, 27 May 2004).

C. Right of individual application to the Constitutional Court

18. The Constitution of the Republic of Azerbaijan of 12 November 1995, as amended by the referendum of 24 August 2002, provides as follows:

Article 130. The Constitutional Court of the Republic of Azerbaijan

"V. Every person claiming to be a victim of an infringement of his or her rights and freedoms by the legislative and executive authorities, as well as decisions of municipal authorities and courts, may lodge a complaint with the Constitutional Court

of the Republic of Azerbaijan ... with the purpose of the restoration of the infringed human rights and freedoms."

19. The Law on the Constitutional Court of the Republic of Azerbaijan of 23 December 2002, in force from 8 January 2004 (hereafter the "Law on Constitutional Court"), provides as follows:

Article 34. Complaints

"34.1. Every person claiming to be a victim of an infringement of his or her rights and freedoms by the legislative and executive authorities, as well as decisions of municipal authorities and courts, may lodge a complaint with the Constitutional Court of the Republic of Azerbaijan in order to resolve matters set out in Article 130, Part III.1-7 of the Constitution with the purpose of the restoration of the infringed human rights and freedoms. ...

34.4. Complaints can be submitted to the Constitutional Court in the following cases:

34.4.1. after exhaustion of all appeal rights, within six months of the entry into force of the decision of the court of last instance (the Supreme Court of the Republic of Azerbaijan);

34.4.2. within three months of the infringement of the complainant's right to access to court.

34.5. A complaint may be lodged directly with the Constitutional Court if the courts of general jurisdiction cannot prevent serious and irreparable damage to the complainant as a result of violation of his or her human rights and freedoms."

D. Relevant domestic practice

20. Prior to lodging a constitutional complaint against the domestic courts' decisions in civil cases, individual applicants were required, as part of the conditions on admissibility of individual applications under Article 34.4.1 of the Law on Constitutional Court, to have lodged an additional cassation appeal with the President of the Supreme Court, requesting the reopening of the proceedings and a review of the Supreme Court's final decision by the Plenum of the Supreme Court. The constitutional complaint was admitted into preliminary examination only after the individual complainant had obtained either a refusal by the President of the Supreme Court to reopen the proceedings or, if the proceedings had been re-opened, a decision of the Plenum of the Supreme Court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

21. The applicant complained that the failure by the Ministry of Justice to register the public association in a timely manner had constituted an interference with his freedom of association. As the Ministry evaded registering the organisation by significantly delaying the examination of the founders' registration requests and breaching the statutory time-limit for the official response, his association had not been able to acquire legal status. This allegedly constituted a violation of his right to freedom of association, as provided in Article 11 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

A. Admissibility

1. *Scope of the case and its compatibility* ratione temporis *with the provisions of the Convention*

22. The Government submitted that each of the three registration requests had related to a different association, because each time either the number of founders or the name of the association had been different. Specifically, the first registration request referred to an association named the Scientific-Practical Centre "Humanity and Environment" (*"İnsan və Mühit" Elmi-Əməli Mərkəzi*), while the second and third registration requests related to an association named the Public Association "Humanity and Environment" (*"İnsan və Mühit" İctimai Birliyi*). Moreover, while the second registration request was signed by three co-founders, the third one was signed only by two of them. For these reasons, the Government argued that the first and second registration requests related to different associations and were irrelevant to this case.

23. The applicant stated that all the registration requests had related to the same public association. The changes in the full name of the association had been due to minor corrections made by the founders in the association's constituent documents during the course of the registration process. Moreover, a mere exclusion of one of the founders before the third registration request did not "change the public association and ... make it different". Finally, the fact that all the registration requests referred to the same association had never been disputed at the domestic level by the Ministry of Justice.

24. Having regard to the different versions of the association's charter submitted at each registration request, the Court is not persuaded by the Government's argument that it was not the same public association. Moreover, it does not appear from the materials in the case file that the domestic courts considered the three registration requests to relate to different public associations.

25. In any event, the Court notes that the events relating to the first and second registration requests occurred prior to 15 April 2002, the date of the Convention's entry into force with respect to Azerbaijan. The Court notes that it is only competent to examine complaints of violations of the Convention arising from events that have occurred after the Convention had entered into force with respect to the High Contracting Party concerned (see, for example, *Kazimova v. Azerbaijan* (dec.), no. 40368/02, 6 March 2003). Accordingly, the Court's competence is limited to the part of the complaint relating to the events that occurred after 15 April 2002, whereas the events relating to the applicant's first and second registration requests fall outside of its competence *ratione temporis*. However, where necessary, the Court shall take into account the state of affairs as it existed at the beginning of the period under consideration.

2. Domestic remedies

26. The Government submitted that the applicant had not exhausted domestic remedies because, in his submissions to the domestic courts, he had not specifically complained of an infringement of his right to freedom of association under Article 11 of the Convention.

27. The Government further submitted that "despite [the fact that] the Supreme Court, as a cassation instance, was the highest judicial authority in Azerbaijan, there was [a] higher judicial instance directly accessible to the applicant, [namely] the Constitutional Court". The Government argued that, under domestic law, final decisions of the Supreme Court could be reviewed by the Constitutional Court. An individual application to the Constitutional Court constituted an ordinary remedy which the applicant had failed to exhaust. In this regard, the Government argued that, in *Ramazanova and Others v. Azerbaijan* (no. 44363/02, § 43, 1 February 2007), the European Court had recognised the Constitutional Court as an effective domestic

remedy for alleged violations of the rights and freedoms under the Convention.

28. The applicant submitted that it was not necessary for him to refer expressly to Article 11 of the Convention in his appeals to the domestic courts, because his complaint that the Ministry had unlawfully "evaded the registration of the non-governmental organisation" constituted a substantive complaint of an infringement of his freedom of association.

29. The applicant also noted that the final decision in the present case had been delivered by the Supreme Court on 5 November 2003. In such circumstances, he could not have been required to lodge an appeal with the Constitutional Court, because that court had not been directly accessible to individuals until the beginning of 2004, when the right of individual application had been granted by the Law on Constitutional Court.

30. In addition, the applicant argued that the Constitutional Court did not constitute part of the system of the courts of general jurisdiction and could not be considered as an effective remedy. The Constitutional Court was accessible to individuals only after exhausting the additional cassation procedure, that is requesting the President of the Supreme Court to reopen the proceedings and refer the case to the Plenum of the Supreme Court. The additional cassation procedure was an ineffective remedy in itself, because it constituted an indirect and extraordinary appeal.

31. Lastly, the applicant argued that, in practice, the Constitutional Court was ineffective because, in the period between 2004 and 2007, it had admitted for examination only about 60 applications out of approximately 1,600 individual applications made.

32. As for the Government's argument that the applicant had not expressly relied on Article 11 of the Convention in the domestic proceedings, the Court finds that the applicant's court action against the Ministry of Justice, in which he complained of unlawful delay in state registration of the association of which he was a founder, amounted in substance to a complaint of an alleged violation of his right to freedom of association.

33. As to the Government's contention that the applicant was also required to apply to the Constitutional Court, the Court points out, at the outset, that the Government's interpretation of the *Ramazanova and Others* case is incorrect. Nothing in that case can be interpreted to suggest that the Court had "established" that the Constitutional Court was a domestic remedy to be exhausted in Azerbaijan prior to applying to Strasbourg. In that case, the applicants had indeed lodged an additional cassation appeal and a constitutional complaint after lodging their application with the Court (see *Ramazanova and Others*, cited above, §§ 22-24); as such, these developments were taken into consideration by the Court as new factual circumstances of the case which took place after the lodging of the application with the Court and which resulted in the reopening of the

domestic proceedings in the courts of general jurisdiction. However, the question whether the applicants were required, within the meaning of Article 35 § 1 of the Convention, to file a constitutional complaint either before or after lodging their application with the Court was not, as such, within the scope of issues on which the Court was called upon to decide in that case (ibid., §§ 40-45).

34. It therefore remains to be determined whether, in the present case, the applicant was required, within the meaning of Article 35 § 1 of the Convention, to apply to the Constitutional Court.

35. The Court reiterates that the purpose of the domestic remedies rule in Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged before they are submitted to the Court. However, the only remedies to be exhausted are those that relate to the breaches alleged and that, at the same time, are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see, among other authorities, *Vernillo v. France*, judgment of 20 February 1991, Series A no. 198, pp. 11-12, § 27).

36. The Court reiterates that the issue whether domestic remedies have been exhausted is normally determined by reference to the date when the application was lodged with the Court (see *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V (extracts)) although, depending on the circumstances of the case, the Court may accept that the last stage of available remedies may be reached after the lodging of the application but before the Court is called upon to pronounce itself on admissibility (see, for example, *Ringeisen v. Austria*, judgment of 16 July 1971, Series A no. 13, p. 38, § 91; *Ramazanova and Others*, cited above, § 42; and *Ivanov v. Azerbaijan* (dec.), no. 34070/03, 15 February 2007). This rule is also subject to other exceptions which may be justified by the specific circumstances of each case, for example when a new remedy, specifically designed to address a certain general problem, is introduced after the lodging of a particular individual application with the Court (see, for example, *Nogolica v. Croatia* (dec.), no. 77784/01, ECHR 2002-VIII; see also, among many other cases, *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX).

37. Turning to the circumstances of the present case, the Court notes that, although the right of individual application to the Constitutional Court was granted by the constitutional amendments of 24 August 2002, such a right was not available in practice until the entry into force of the Law on Constitutional Court on 8 January 2004, which established the procedural rules for examination of individual constitutional complaints. According to the information available to the Court, pending the entry into force of that

Law, the Constitutional Court refused to examine any complaints lodged by individuals, citing lack of procedural rules for examination of such complaints.

38. Accordingly, at the time of the lodging of the present application with the Court on 30 December 2003, lodging a constitutional complaint did not offer the applicant any reasonable prospect of success (see, *mutatis mutandis*, *Urukalo and Nemet v. Croatia*, no. 26886/02, § 35, 28 April 2005). The Court also observes that, unlike the *Nogolica* and *Brusco* cases cited above, this new remedy was not introduced specifically with the purpose of providing direct redress for such type of complaints as those raised by the applicant in the present case. The Court finds no other special circumstances which would justify making an exception to the general rule of non-exhaustion.

39. Furthermore, in any event, the Court observes that, in accordance with the domestic practice based on Article 34.4.1 of the Law on Constitutional Court, individuals wishing to lodge a constitutional complaint were first required to lodge an additional cassation appeal with the Supreme Court's President, asking for the reopening of the proceedings and a review of the Supreme Court's final decision by the Plenum of the Supreme Court. Only after an attempt to make use of that remedy did the Constitutional Court accept complaints from individual applicants for preliminary examination. In this connection, the Court reiterates its previous finding that an additional cassation appeal filed with the President of the Supreme Court constituted an extraordinary remedy which was not required to be exhausted, within the meaning of Article 35 § 1 of the Convention, prior to lodging an application with the Court (see *Babayev*, cited above).

40. In such circumstances, the Court considers that the Constitutional Court constituted a remedy which lacked adequate accessibility. In particular, the applicant could not be required to exhaust a remedy which, as a precondition of accessibility, obliged the applicant to attempt to exhaust another remedy which was found to be ineffective within the meaning of Article 35 § 1 of the Convention.

41. For the reasons above, the Court rejects the Government's objection.

3. Conclusion

42. Having regard to the above conclusions, the Court further notes that the complaint is not inadmissible on any other grounds and that it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It must therefore be declared admissible in the part relating to the events that took place after 15 April 2002.

B. Merits

1. The parties' submissions

43. The Government argued that there had been no interference with the applicant's freedom of association, noting that the Ministry had not formally refused to register the association. Instead, it merely returned the association's foundation documents to the founders so that the latter could rectify the deficiencies and ensure that they complied with the requirements of the domestic law. The Government contended that, although "a refusal to register a public association might be regarded as a violation of the right to freedom of association, a delayed response to [an application for state registration] is not a violation of this right".

44. Moreover, the Government argued that the lack of the status of a legal entity did not prevent the association from continuing its activities. In this connection, they noted that the association had published a book as a part of its actual activity even without a status of a legal entity.

45. The Government further submitted that the founders "did not comply with the duty of diligence" during the registration process, as the public association's constituent documents had not been prepared in accordance with the requirements of the law. Even if the Ministry had committed procedural errors, they had not amounted to a violation of the applicant's rights under Article 11.

46. The applicant argued that the delay in responding to the founders' registration requests, which had been significantly beyond the time-limits set by the domestic law, had constituted an interference with, and a violation of, his right to freedom of association. The applicant maintained that such a delay was in breach of the domestic law.

47. The applicant also noted that, without acquiring the status of a legal entity through state registration, the association had been unable to function properly and to engage in its primary activities. As for the book to which the Government referred, the applicant noted that the book had not been published by the Public Association "Humanity and Environment". He stated that he was one of the co-authors of the book, and the name of the unregistered association was mentioned next to his name simply to show his occupation and activities in the field of non-governmental organisations.

2. The Court's assessment

48. The Court has found previously that the failure by the Ministry of Justice to reply, within the statutory time-limits, to requests for state registration of a public association, amounted to a *de facto* refusal to register the association. Lacking the status of a legal entity, the association's legal capacity was not identical to that of state-registered non-governmental organisations, even assuming that it could engage in certain limited

activities. The significant delays in the registration procedure, if attributable to the Ministry of Justice, amounted to an interference with the exercise of the right of the association's founders to freedom of association (see *Ramazanova and Others*, cited above, §§ 54-60, with further references). Accordingly, in the present case, where the applicant was one of the founders of the public association, there has been an interference with the exercise of his right to freedom of association.

49. Such interference will not be justified under the terms of Article 11 of the Convention unless it was "prescribed by law", pursued one or more of the legitimate aims set out in paragraph 2 of that Article and was "necessary in a democratic society" for the achievement of that aim or aims (see, for example, *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 104, ECHR 1999-III).

50. The Court is aware of the fact that, since the time of the events giving rise to the present complaint, certain amendments have been made to Azerbaijani legislation on state registration of legal entities. However, for the purposes of this complaint, the Court will have regard to the domestic law as it was applicable at the relevant time.

51. The Court observes that Article 9 of the Law on State Registration of Legal Entities of 6 February 1996 set a ten-day time-limit for the Ministry to issue a decision on the state registration of a legal entity or refusal to register it. Where the legal entity's foundation documents contained rectifiable deficiencies, the Ministry could return the documents to the founders within the same ten-day time-limit with instructions for their rectification. After the registration request was resubmitted following a rectification, the law provided for a five-day time-limit for official response.

52. In the present case, the Ministry delayed its response to each of the three registration requests by several months. In particular, in the period falling within the Court's temporal jurisdiction, the response to the applicant's third registration request of 28 August 2002 was delayed by more than three months, whereas the law clearly required it to be issued within five days. Therefore, the Ministry violated the procedural time-limits. There was no basis in the domestic law for such delays (see *Ramazanova and Others*, cited above, § 65).

53. The Court also reiterates its finding that the Law on State Registration of Legal Entities of 6 February 1996 did not afford sufficient protection against delays in the state registration procedure caused by the Ministry's failure to respond to registration requests within the statutory time-limits (see *Ramazanova and Others*, cited above, § 66).

54. Having found that the Ministry of Justice breached the statutory time-limit for issuing the formal response to the state registration requests and that the domestic law did not afford sufficient protection against such delays, the Court concludes that the interference was not "prescribed by law" within the meaning of Article 11 § 2 of the Convention.

55. Having reached that conclusion, the Court does not need to satisfy itself that the other requirements of Article 11 § 2 (legitimate aim and necessity of the interference) have been complied with.

56. There has accordingly been a violation of Article 11 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

57. The applicant also complained that, contrary to Article 6 § 1 of the Convention, the domestic courts had not been independent and impartial. He noted that, in accordance with the law applicable at the time of the events in question, the selection of candidates for judicial positions in Azerbaijan was made by the Judicial Legal Council under the President of the Republic of Azerbaijan, presided over by the Minister of Justice. The applicant alleged that, in such circumstances, the judges of the domestic courts could not be independent and impartial in the proceedings against the Ministry of Justice, because their subsequent reappointment to the courts would depend on the discretion of the Minister of Justice as the Chairman of the Judicial Legal Council. Furthermore, in conjunction with Article 6 § 1, the applicant complained under Article 13 of the Convention that the domestic courts could not be considered as an effective remedy because they had never ruled against the Ministry of Justice in cases concerning delays in registration of non-governmental organisations.

58. The Court notes that these complaints are essentially the same as those raised before the Court in the case of *Asadov and Others v. Azerbaijan* ((dec.), no. 138/03, 12 January 2006). In that case, the Court found that the complaints were manifestly ill-founded. In the absence of any substantially new arguments or evidence submitted in the present case, the Court does not find any reason to deviate from its reasoning in the *Asadov and Others* case.

59. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

1. Pecuniary damage

61. The applicant claimed 20,000 euros (EUR) in respect of pecuniary damage. He argued that, as a result of the Ministry's failure to register the association for several years, the association's founders had not been able to secure any financial resources for its activity.

62. The Government submitted that this claim was unsubstantiated.

63. The Court cannot speculate whether the applicant would indeed have been able to secure any funding for his association if it had been registered in a timely manner, and if so, in what amount. The Court, therefore, rejects the applicant's claim in respect of pecuniary damage.

2. Non-pecuniary damage

64. The applicant claimed EUR 10,000 in respect of non-pecuniary damage.

65. The Government contested this claim.

66. In the Court's view, the delay in the state registration procedure must have been frustrating for the applicant as the co-founder of the public association. Nevertheless, the amount claimed is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 1,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

67. The applicant also claimed EUR 2,000 for the costs and expenses incurred before the domestic courts and the Court. He claimed that this amount also included translation, postal, fax and photocopy expenses. Although he was unable to produce evidence proving these expenses, he argued that they were actually incurred and reasonable.

68. The Government asked the Court to reject this claim for lack of evidence.

69. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to all the information in the Court's possession and the above criteria, as well as the fact that the applicant was not represented by a lawyer in the domestic proceedings and that he has received the sum of EUR 850 in legal aid from the Council of Europe, the Court finds that there is no call to award the applicant any additional amount under this head.

C. Default interest

70. 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 complaint concerning the applicant's right to freedom of association admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 11 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, EUR 1,000 (one thousand euros) in respect of non-pecuniary damage, to be converted into the national currency at the rate applicable at the date of settlement, plus any tax that may be chargeable on this amount;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 17 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President