CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF ZILIBERBERG v. MOLDOVA

(Application no. 61821/00)

JUDGMENT

STRASBOURG

1 February 2005

FINAL

01/05/2005

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

In the case of Ziliberberg v. Moldova,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 11 January 2005,

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

PROCEDURE

1. The case originated in an application (no. 61821/00) 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 Cristian Ziliberberg ("the applicant"), on 10 August 2000.

2. The applicant was represented by Mr Sergiu Ostaf, a lawyer practising in Moldova. The Moldovan Government ("the Government") were represented by their Agent, Mr Vitalie Pârlog.

3. The applicant alleged, in particular, that his right to freedom of assembly had been breached and also that his right to a fair hearing was breached as a result of the Chişinău Regional Court's failure to summon him for the hearing of his appeal.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court).

5. By a decision of 4 May 2004, the Court declared the applicant's complaint under Article 11 to be inadmissible, but declared the remainder of the application admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1980 and lives in Chişinău, Moldova. He was a student at the time of the events and earned a stipend of 50 Moldovan Lei (MDL).

8. On 18 April 2000, between 9.30 a.m. and 12.30 p.m., the applicant attended a demonstration against the decision of the Municipal Council to abolish urban transport privileges for students. The demonstration was not authorised in accordance with the law and it appears from the statements of the parties that its organisers did not even apply for authorisation. The demonstration took place on the Great National Assembly Square in Chişinău. In the beginning it was peaceful, but later some of the demonstrators started to throw eggs and stones at the Municipality building and the police intervened.

9. Around 12.30 p.m. the applicant was arrested by the police on grounds of being an active participant in an unauthorised demonstration in breach of Article 174/1 § 4 of the Code of Administrative Offences (hereinafter referred to as the "CAO"). He was brought to the precinct police station an hour later. Between 1.30 p.m. and 7.00 p.m., he was detained in the police station and interrogated by several criminal investigators.

10. In his written statement given at the police station, the applicant mentioned, *inter alia*, that he had been arrested by the police when he and a journalist from the National Radio approached a group of policemen beating up a student. Since he had written on his forehead the word "STUDENT", the police arrested him. He stated that he was an active participant but that he was not involved in violence.

11. On an unspecified date, the district police completed the administrative case file in connection with the offence committed by the applicant, mentioning *inter alia* that he had actively participated in an unauthorised meeting that had taken place in front of the building of the Municipal Council. The case was then referred to the competent district court.

12. Following an oral hearing on 19 April 2000, the Centru District Court imposed on the applicant an administrative fine of MDL 36 (the equivalent of 3.17 euros (EUR) at the time) provided for in Article 174/1 § 4 of the CAO. In its order, the court stated, *inter alia*, that the applicant had actively participated in a demonstration of students, which had been carried out without authorisation from the Municipal Council, and that he had admitted having participated in the demonstration.

13. On 28 April 2000 the applicant lodged an appeal against the above order. He argued that the fine had been unlawfully imposed on him and that the sanction was contrary to the freedom of assembly and to the right to strike guaranteed by Articles 40 and 45 of the Constitution.

14. On 4 May 2000 at 10 a.m. the Chişinău Regional Court heard the applicant's appeal in his absence and dismissed it.

15. According to the Government the summons for the hearing was sent on 2 May 2000 by regular post and should have arrived at its destination on 3 May 2000.

16. According to the applicant, it was sent on 3 May 2000 and was received by him on 4 May 2000 after 10 a.m.

17. The postmark on the envelope, applied by the outgoing post office (namely, by the first post office through which the envelope was routed) indicates the date of 3 May 2000. The postmark applied by the incoming post office is not entirely legible.

18. On 5 May 2000, the applicant appeared before the Registry of the Chişinău Regional Court to inquire about his case. He was issued with a copy of the judgment of the Chişinău Regional Court of 4 May 2000 dismissing his appeal and upholding the order of the District Court of 19 April 2000.

19. On 10 May 2000 the applicant filed a request for annulment *(contestaţie în anulare)* with the Chişinău Regional Court against its decision of 4 May 2000, arguing that he had not been properly summonsed and consequently did not have a fair trial. The court refused to register the request on the ground that the CAO did not provide for such a remedy. On 18 May and 22 June 2000 respectively, the court rejected the repeated requests lodged by the applicant and his lawyer.

20. On 18 May 2000, the applicant accompanied by a lawyer of the Helsinki Committee of Human Rights and by an advocate made another attempt to file a request for annulment with the Registry of the Chişinău Regional Court but the Registry refused to register it.

21. On 12 June 2000, following the bailiff's request, the applicant paid the fine provided for in the decision of 19 April 2000.

II. RELEVANT DOMESTIC LAW AND PRACTICE

22. The relevant provisions of the Code of Administrative Offences in force at the material time read:

Article 1

The Code of Administrative Offences aims at the protection of the personality, the rights and the legal interests of the physical and moral person, property, the State and public order, as well as at finding, preventing and eliminating the consequences of administrative offences and at educating citizens in the spirit of respect for the law.

Article 11/1

... The sanction for the attempt to commit an administrative offence is established in accordance with the article which provides for the responsibility for that offence.

Article 12

Only persons who were 16 years old at the moment of the commission of an administrative offence can be held responsible.

Article 18

The person who has committed an administrative offence while acting in legitimate defence shall not be responsible...

Article 22

The administrative sanction is a measure of responsibility and is applied in order to educate the person who committed an administrative offence, as well as to deter any future similar acts by the perpetrator himself or by others.

Article 26/4

In case of evasion of payment of a fine imposed for an administrative offence in bad faith, the court may replace the fine with imprisonment of ten days for every MDL 18, the maximum term being thirty days.

(În caz de sustragere cu rea-voinţă de la achitarea amenzii aplicate pentru contravenţia administrativă savârşită, instanţa judecatorească poate înlocui această sancţiune cu arest administrativ, calculându-se zece zile de arest pentru un salariu minim, termenul fiind cel mult treizeci de zile.)

The conversion of an administrative fine into imprisonment is ordered by a court following a request lodged by the bailiff in accordance with Article 26 of the CAO. According to the Government, the courts can convert administrative fines into imprisonment when the following circumstances are present:

- when a person who knows about a fine imposed on him/her refuses to appear before a bailiff after multiple summonses;
- when the offender does not have any revenue or goods that could be sold;

- when the offender is unemployed and accordingly does not have a salary from which the fine could be deducted;
- when the offender has failed to comply with the time limit set by a court for the payment of an administrative fine.

A judgment by which an administrative fine is converted to imprisonment can be challenged before the hierarchically superior court. A person to whom such a measure is applied can always bring it to an end, by paying the administrative fine. The conversion cannot be made in respect of pregnant women, women who have children under twelve years of age, persons aged under eighteen and invalids of the first and second degree.

As to the latter provision the parties submitted copies of seven recent judgments in which administrative fines have been converted into imprisonment, in some of which the conversion had been ordered in the absence of the offender and not in a public hearing. In one of them the conversion was made due to the offender's failure to pay an administrative fine in time. At the same time the Government submitted copies of letters addressed to the Government Agent by presidents of thirteen courts in which it was stated that in the last two years their courts had converted administrative fines into imprisonment in twenty six cases.

Article 33

The circumstances that mitigate the administrative responsibility are:

1) repentance of the offender;

2) prevention by the offender of the negative effects of the offence and voluntary compensation for the damage caused;

3) committing the offence under influence of strong emotions or amidst difficult personal or family circumstances;

4) committing the offence as a minor;

5) committing the offence as a pregnant woman or as a woman who has a child aged under one year.

Article 34

The circumstances that aggravate the administrative responsibility are:

1) the continuation of illicit behaviour in spite of the demand to refrain from it, made by an authorised person;

2) the commission of a similar administrative offence for the second time within one year or the commission of an offence by a person who had earlier committed a criminal offence;

3) involving a minor in an activity contrary to CAO;

4) the commission of an offence by a group of people;

5) the commission of an offence during natural calamities...;

6) the commission of an offence while under influence of alcohol....

Article 174/1

(2) The organisation and holding of an assembly without a prior declaration deposited with the Municipal Council or not authorised by it, and in breach of the conditions (manner, place, time) concerning the conduct of a meeting as indicated in the authorisation shall be punishable by a fine to be imposed on the organisers (leaders) of the assembly in an amount equal to between ten and twenty five times the minimum wage....

(4) Active participation in an assembly referred to in paragraph 2 of the present article shall be punishable by a fine in an amount between MDL 36 and 90.

Article 254

The hearing regarding an administrative offence shall be conducted in the presence of the suspect. If the suspect is absent, the hearing can take place only when it is proved that he or she was informed in due time about the place and the time of the hearing and if he or she did not submit any request for adjournment.

Article 281

A decision of the first instance court regarding an administrative offence may be challenged before the hierarchically superior court, by an application lodged by the interested person or by the prosecutor.

Article 282/3

When the parties have been informed in due time about the date of the hearing but do not appear, the appeal may be heard in their absence....

Article 282/5

In examining a case regarding an administrative offence, the appeal instance may render one of the following decisions:

1) to leave the challenged decision unchanged and to reject the appeal application;

2) to quash the challenged decision and to order a re-examination by the first instance court;

3) to quash the challenged decision and to send the file to the investigation organs;

4) to quash the challenged decision and to stop the proceedings;

5) to change the administrative sanction and to mitigate the sanction imposed.

Article 282/6

The appeal instance may quash the challenged decision for the following reasons: when the first instance court committed procedural mistakes or when it applied the wrong law. A decision which is correct on its merits cannot be quashed for procedural reasons, except in the following circumstances:

1) the case was examined by a set of judges which was not composed in accordance with the law;

2) the decision was not signed by the judge who examined the case or it was signed by a judge who did not participate at the trial of the case;

3) the decision was not pronounced by the judge who examined the case;

4) there were no minutes of the hearing, contrary to the law;

5) the case was examined without an interpreter, contrary to the law.

Article 282/7

After examining the case, the appeal instance pronounces its decision. The decision does not have to contain any reasoning.

Article 293

If an offender does not pay the fine within the time provided for in Article 292 of the present Code, the amount of the fine shall be compulsorily deducted from his or her salary, pension, stipend or other income in accordance with the rules set in the Code of Civil Procedure.

If the offender does not have an employment or if the deduction of the fine from the salary, pension, stipend or other income is not possible, the amount of the fine shall be recovered from the forced sale of his or her personal belongings or of his or her part of a co-ownership....

23. The relevant provisions of the Code of Criminal Procedure in force at the material time read:

Article 128

The accused is called before the investigator by means of a summons. The summons is handed to the accused and the certificate confirming the date of the receipt is returned to the investigator. The summoning can also be done by telephone or by telegram.

24. The relevant provisions of the Code of Civil Procedure in force at the material time read:

Article 101

The court informs the parties to the proceedings about the date and the place of the hearing by means of a summons....

The summons is to be handed to the parties in due time, so that they have enough time to prepare for the hearing in front of the court. In any event, the summons should be handed to the defendant at least three days ahead of the hearing.

25. In a book entitled "The Procedure in Administrative Offence cases" by Sergiu Furdui (judge at the Supreme Court of Justice in Moldova), (Chişinău 2000), the author states the following: "The Code of Administrative Offences provides for a number of procedural measures such as: detention, body search, search of property, administrative arrest... The CAO provides for few procedural guarantees as it does not guarantee legal aid, presumption of innocence, etc. The CAO cases are heard by criminal sections of the courts.... Only the convicted person may pay the administrative fine... It is illegal for the fine be paid by somebody else".

THE LAW

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

26. The applicant alleges a violation of his right to a fair hearing as guaranteed by Article 6 § 1 of the Convention, which reads:

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law..."

A. Applicability of Article 6 § 1

27. The applicant contended that the charges against him could be considered "criminal" for the purposes of Article 6 of the Convention. He submitted that CAO cases were examined by criminal sections of the courts and that in the French legal system offences of this kind were part of the Criminal Code. He further claimed to have been detained by the police for five and a half hours on 18 April 2000, during which time he was interrogated by criminal investigators. The applicant also argued that, beside fines, the Code of Administrative Offences provided for procedural measures such as detention, corporal search, search of property and administrative arrest. If a fine was not paid, the sanction could be commuted to an administrative arrest of ten days for every MDL 18 (the equivalent of EUR 1.59 at the time). Had he not had the means to pay the fine, he would have been imprisoned for twenty days. He stated that his monthly stipend as a student was MDL 50-60, depending on his academic performance, and that therefore the fine imposed on him constituted more than a half of his monthly income.

28. The Government argued that the charges against the applicant were not "criminal" but "administrative". They emphasised the necessity of keeping administrative offences independent of the criminal justice system, and they considered that a dividing line had been drawn between disciplinary and criminal charges in a manner consistent with Article 6 of the Convention. The Government submitted that the offence was not of a criminal nature since it was punished with a sanction which had an "educational" and a "preventive" purpose. The sanction provided by the Code of Administrative Offences for the offence in question varied between MDL 36 and MDL 90 and the minimum fine was imposed on the applicant. According to the Government, the fine constituted approximately ten percent of the average monthly salary in Moldova at the material time and it was not converted into imprisonment. The Government also submitted that the applicant did not run any risk to have his fine converted to imprisonment.

29. The Court notes that it is not disputed by the parties that the applicability of Article 6 falls to be assessed on the basis of the three criteria outlined in the *Engel* judgment (*Engel and Others v. the Netherlands* judgment of 8 June 1976, Series A no. 22, §§ 82 and 83). In that context, the Court recalls that in order to determine whether an offence qualifies as "criminal" for the purposes of the Convention, the first matter to be ascertained is whether or not the text defining the offence belongs, in the legal system of the respondent State, to the criminal law; next, the nature of the offence and, finally, the nature and degree of severity of the penalty that the person concerned risked incurring must be examined, having regard to the object and purpose of Article 6 of the Convention, to the ordinary

meaning of the terms of that Article and to the laws of the Contracting States (see, among other authorities, the *Garyfallou AEBE v. Greece* judgment of 24 September 1997, *Reports of Judgments and Decisions* 1997-V, p. 1830, § 32).

30. It is not disputed by the parties, that the offence for which the applicant was convicted is not characterised under domestic law as "criminal". However, the indications furnished by the domestic law of the respondent State have only a relative value (see the *Kadubec v. Slovakia*, judgment of 2 September 1998, *Reports* 1998-VI, § 51).

31. It is therefore necessary to examine the offence in the light of the second and third criteria mentioned above. In this respect, the Court recalls that these criteria are alternative and not cumulative: for Article 6 to apply, it suffices that the offence in question should by its nature be "criminal" from the point of view of the Convention, or should have made the person concerned liable to a sanction which, by its nature and degree of severity, belongs in general to the "criminal" sphere (see, *inter alia*, the *Lutz v. Germany* judgment of 25 August 1987, Series A no. 123, p. 23, § 55). This does not exclude that a cumulative approach may be adopted where the separate analysis of each criterion does not make it possible to reach a clear conclusion as to the existence of a "criminal charge" (see, *Janosevic v. Sweden*, no. 34619/97, § 67, ECHR 2002-VII).

32. As regards the nature of the offence committed by the applicant, the Court notes that he was convicted under Article 174/1 § 4 of the Code of Administrative Offences ("CAO") of participating in an unauthorised demonstration. That provision regulates offences against public order and is designed to regulate the manner in which demonstrations are to be held. Accordingly, the legal rule infringed by the applicant is directed towards all citizens and not towards a given group possessing a special status. The general character of the legal rule in question is further confirmed by Article 1 and Article 12 of the CAO which refer to the fact that administrative responsibility comes into operation at the age of sixteen and all citizens must show respect for legal rules and the rights of other citizens and legal persons (see *Öztürk v. Germany*, judgment of 21 February 1984, Series A no. 73, § 53).

33. Moreover, Mr Ziliberberg was sentenced by the courts to a fine. The fine was not intended as pecuniary compensation for damage but was punitive and deterrent in nature (see, *mutatis mutandis*, the *Bendenoun v France* judgment of 24 February 1994, Series A no. 284, § 47). Article 22 of the CAO is relevant to that effect. The Court reiterates that a punitive character is the customary distinguishing feature of criminal penalties (see the above-mentioned *Öztürk* judgment, § 53).

The Court reiterates that in principle, the general character of the CAO and the purpose of the penalties, which are both deterrent and punitive, suffice to show that for the purposes of Article 6 of the Convention the

applicant was charged with a criminal offence (see, *Lauko v. Slovakia*, judgment of 2 September 1998, *Reports* 1998-VI, § 58).

34. The criminal character of the offence is further evidenced by the fact that the applicant was taken to the police where he was held for a few hours and interrogated by criminal investigators. Moreover, the CAO contains provisions relating to such matters as mitigating and aggravating circumstances, responsibility for attempt to commit an offence and legitimate defence (see paragraph 22 above) which are indicative of the criminal nature of the administrative offences. It is also important to note that the CAO cases are heard by criminal chambers of the courts.

The Court reiterates that the lack of seriousness of the penalty at stake cannot deprive an offence of its inherently criminal character (see the above mentioned *Öztürk* judgment, § 54). In the present case, however, the severity of the actual and potential penalty could in principle be considered as another argument in favour of the applicability of Article 6. In this respect it is to be noted that the applicant was fined MDL 36 (the equivalent of EUR 3.17 at the time), which constituted over 60% of his monthly income and that he faced a maximum penalty of MDL 90 (the equivalent of EUR 7.94 at the time).

Moreover, if he failed to pay the fine in the circumstances provided for in Article 26/4 of the CAO he was liable to be imprisoned for twenty days (see paragraph 22 above). It is important to note in this respect that under the Code of Civil Procedure in force at the material time, the failure to comply with civil judgments could not lead to imprisonment.

Given the state of the Moldovan legislation and the practice which transpires from the judgments presented by the parties, the Court is unable to conclude whether in the particular circumstances of his case the applicant ran the risk of being imprisoned in accordance with Article 26/4 of the CAO. However, even if the fine could not have been converted into imprisonment in his case, that would not have been decisive for the classification of an offence as "criminal" under Article 6 (see, *Janosevic v. Sweden*, cited above, § 69).

35. Having weighed the various aspects of the case, the Court notes the predominance of those which suggest that a criminal charge was involved. Although none of them is decisive on its own, taken together and cumulatively they bring the "charge" within the criminal sphere for purposes of Article 6 § 1.

36. In the light of the foregoing, the Court considers that Article 6 § 1 is applicable in the instant case.

B. Compliance with Article 6 § 1

37. The applicant complained that he was not properly summonsed for the hearing of his appeal on 4 May 2000 before the Chişinău Regional Court and that he could not therefore be present. Referring to the postmarks on the envelope (see paragraphs 16-17 above), he argued that the summons was sent on 3 May 2000 and reached him after the hearing that took place on 4 May 2000 at 10 a.m.

38. The Government did not agree with the applicant. According to them, the summons was sent on 2 May 2000 and should have reached the applicant on 3 May 2000. In this respect the Government sent the Court a copy of the correspondence register (a handwritten notebook) of the Chişinău Regional Court, according to which the summons was sent to the applicant on 2 May 2000. As to the postmarks on the envelope, the Government considered them to be illegible.

39. The Court notes that on 4 May 2000 at 10 a.m. the Regional Court heard the applicant's appeal in his absence (see paragraph 14 above). It finds that the postmark on the envelope, applied by the outgoing post office (namely, by the first post office through which the letter was routed) clearly indicates the date of 3 May 2000. It is only the postmark applied by the incoming post office that is not entirely legible. Consequently, the summons was sent by the Regional Court only one day before the hearing and the Court concludes that the applicant did not therefore have any prior notice of the hearing.

40. Article 6 of the Convention, read as a whole, guarantees the right of an accused to participate effectively in his criminal trial. This includes, *inter alia*, a right not only to be present, but also to hear and follow the proceedings. (see, for example, *Stanford v. the United Kingdom*, judgment of 23 February 1994, Series A no. 282-A, § 26; *Barberà, Messegué and Jabardo v. Spain* judgment of 6 December 1988, Series A no. 146, § 78). This right is implicit in the very notion of an adversarial procedure and can also be derived from the guarantees contained in sub-paragraphs (c), (d) and (e) of paragraph 3 of Article 6 – "to defend himself in person", "to examine or have examined witnesses", and "to have the free assistance of an interpreter if he cannot understand or speak the language used in court" (see, *Colozza v. Italy* judgment of 12 February 1985, Series A no. 89, § 27). It is difficult to see in the present case how the applicant could have exercised these rights without being present.

41. The Court further notes that in *Kremzow v. Austria* (judgment of 21 September 1993, Series A no. 268-B) and in *Kamasinski v. Austria* (judgment of 19 December 1989, Series A no. 168), it set out the principle according to which the presence in person of the accused at a hearing of an appeal where only points of law were considered was not crucial. The Court considers that the present case is distinguishable from those cases. In

Kremzow and *Kamasinski*, the accused persons were represented by lawyers and in principle each had the possibility to organise his defence. In the present case, more fundamentally, the applicant was simply unable to do this because he had no prior notice of the hearing.

42. In conclusion the applicant did not have a fair trial in accordance with Article 6 §1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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. Pecuniary damage

44. The applicant claimed MDL 36 for pecuniary damage arguing that that was the amount of the fine imposed on him following his conviction for participating in an unauthorised demonstration.

45. The Government contested the amount claimed by the applicant. In their view the applicant was not entitled to any pecuniary damage since the Court declared inadmissible his complaint regarding the alleged violation of Article 11 of the Convention.

46. The Court notes that it declared the applicant's complaint concerning Article 11 of the Convention inadmissible (see paragraph 5 above). While it is true that the Court has found that the proceedings which resulted in the imposition of the fine were unfair, it cannot be said that, had the proceedings complied with Article 6 of the Convention, no such fine would have been imposed. The Court does not therefore, find a causal link between the mistake and the damage claimed and it does not make an award under this head.

B. Non-pecuniary damage

47. The applicant claimed EUR 5,000 for the non-pecuniary damage suffered as a result of distress and frustration caused by the sanction imposed on him for participating in an unauthorised demonstration.

48. The Government disagreed with the amount claimed by the applicant, arguing that the Court found the complaint under Article 11 of the Convention to be inadmissible. They stated that in the present case the mere fact of finding a violation would constitute just satisfaction.

49. The Court notes that the applicant claimed compensation only in respect of the alleged violation of Article 11 of the Convention, without regard to the fact that the Court declared that complaint inadmissible. He did not claim any compensation for the breach of Article 6 § 1 of the Convention and therefore the Court cannot make any award under this head.

C. Costs and expenses

50. The applicant also claimed EUR 1,850 for the costs and expenses incurred before the Court, of which EUR 1,650 were representation fees, and the rest expenses for transportation and communication.

51. The Government did not agree with the amounts claimed, stating that the applicant had failed to prove the alleged representation expenses. According to the Government, the amount claimed by the applicant was too high in the light of the average monthly wage in Moldova and the official fees paid by the State to *pro bono* lawyers. The Government also contested the number of hours spent by the applicant's representative on the case in general and for the research of the case law of the European Court of Human Rights in particular, arguing that a person with a law degree from the Moldovan State University does not need to study the case-law of the European Court of Human Rights since he or she was presumed to have studied it during the second and the fourth year of studies. In the Government's view an award for that purpose would amount to a study scholarship.

52. The Court recalls that in order for costs and expenses to be included in an award under Article 41, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII). It may have regard in that connection to such matters as the number of hours worked and the hourly rate sought (see, *Amihalachioaie v. Moldova*, no. 60115/00, § 47, ECHR 2004-...).

53. In the present case, regard being had to the itemised list submitted by the applicant, the above criteria, the complexity of the case and the fact that part of the complaints were declared inadmissible, the Court awards the applicant EUR 1,000 for incurred costs and expenses.

D. Default interest

54. 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. *Holds* that Article 6 § 1 of the Convention is applicable in the present case;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (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 1 February 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President