



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

THIRD SECTION

CASE OF CSOMA v. ROMANIA

(Application no. 8759/05)

JUDGMENT

STRASBOURG

15 January 2013

FINAL

15/04/2013

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

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In the case of Csoma v. Romania,

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

Josep Casadevall, *President*,

Alvina Gyulumyan,

Ján Šikuta,

Luis López Guerra,

Nona Tsotsoria,

Kristina Pardalos,

Johannes Silvis, *judges*,

and Marialena Tsirli, *Deputy Section Registrar*,

Having deliberated in private on 11 December 2012,

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

PROCEDURE

1. The case originated in an application (no. 8759/05) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Romanian national, Ms Julia Kinga Csoma (“the applicant”), on 24 February 2005.

2. The applicant was represented by Mr Laczkó-Dávid Geza, a lawyer practising in Târgu Secuiesc. The Romanian Government (“the Government”) were represented by their Agent, Mrs Irina Cambrea, of the Ministry of Foreign Affairs.

3. The applicant alleged that failures in her treatment had led to medical complications endangering her life and leaving her permanently unable to bear children.

4. On 7 July 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. As Mr Corneliu Bîrsan, the judge elected in respect of Romania, had withdrawn from the case (Rule 28 of the Rules of Court), the President of the Chamber appointed Mrs Kristina Pardalos to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1972 and lives in Covasna.

A. Background information

7. The applicant, a nurse by profession, fell pregnant in January 2002. The development of her pregnancy was monitored by Dr P.C., a gynaecologist working in the Covasna Town Hospital, the same hospital as the applicant.

8. While she was in the sixteenth week of pregnancy, the foetus was diagnosed with hydrocephalus.

9. Following a consultation with her doctor, it was decided that the pregnancy should be interrupted.

10. On 13 May 2002 she was admitted to the Covasna Town Hospital. On the first day of admission she was put on a drip and medication was infused in order to induce abortion, but to no avail. The next day, concentrated glucose was injected into her stomach with the same purpose of inducing abortion. After the injection, the foetus stopped moving. On 15 May 2002, around midnight, she began to have a fever (39 degrees) and shivers, which lasted until the morning. She was not seen by a doctor during this time. She was only given painkillers.

In the morning, while she was still in bed in the ward and without being taken to the surgery room, she expelled the foetus. She then started bleeding profusely. Despite the fact that two curettages were performed on her, the bleeding would not stop and she was diagnosed with disseminated intravascular coagulation (DIC). The doctor then decided to transfer her urgently to the County Hospital, located in Sfântu Gheorghe, some thirty kilometres away. Although she was in a critical condition, during the transfer she was assisted only by a nurse.

11. When she arrived at the County Hospital, the doctors there had to proceed with a total hysterectomy and bilateral adnexectomy in order to save her life.

B. Complaint with the College of Doctors

12. After consulting several specialists, the applicant formed the opinion that Dr P.C. had committed serious medical errors in treating her.

13. She therefore lodged a complaint with the Covasna County College of Doctors. The County Counsel of the College of Doctors delegated the

assessment of the matter to a doctor from Sfântu Gheorghe County Hospital.

14. On 18 September 2002 the College of Doctors reached the following conclusions:

- (i) the termination of pregnancy had been correctly indicated;
- (ii) as regards the injection of hyperbaric glucose solution, it was found that it could be done in two ways: vaginal or abdominal. The latter procedure ensured better hygiene conditions, but it required a very precise localisation of the placenta by ultrasound scans; these scans had not been found in the applicant's medical records. It was also recommended that the injection of the substance be monitored by ultrasound. This method required the written consent of the patient, after prior notification of the possible risks and complications. The medical records did not include a consent signature or information as to the clinical investigation of any abnormalities by the ultrasound laboratory;
- (iii) DIC was not a direct consequence of an abdominal injection, but it represented a rare, very serious complication arising from this method; and
- (iv) taking into account that the diagnosis of DIC had been correctly detected in time to allow the applicant to be transferred to the county hospital, with the result that her life had been saved, no medical negligence could be identified.

It was noted that there were some procedural failures in the handling of the case: the patient's signature was missing on the consent form; an ultrasound description of the location of the placenta was missing; and a summary of lab test results was also missing.

Taking into account the Town Hospital's facilities and human resources, it was recommended that potentially risky cases should be treated in medical establishments which possessed the necessary facilities to deal with complications.

C. Criminal complaint against Dr P.C.

15. On an unspecified date in 2002, the applicant lodged a criminal complaint against Dr P.C. containing two charges: grievous unintentional bodily harm and negligence in the conduct of a profession. In a statement given on 19 November 2002, she joined a civil claim to her complaint.

On 25 November 2002 the investigating officer ordered a medical expert report to be prepared by specialist medical experts from the Covasna County Forensics Department and from the County Hospital.

16. On 4 December 2002 a medical expert report was issued by the Sfântu Gheorghe Forensics Department. This report concluded that no medical negligence had been committed, noting that the method chosen for

inducing the abortion could be performed in any gynaecological hospital unit. Even if the medical records had not included the results of a lab test, this did not exclude the possibility that a test had been done but the results had not been written down. It was also underlined that the diagnosis of DIC had been quickly determined and that any delay in establishing this diagnosis might have rendered saving the applicant's life almost impossible.

17. On 15 January 2003 the applicant lodged her objections to the medical expert report with the investigating authorities. She noted that she had not been consulted with regard to the objectives of the report and that in any event it was incomplete, even when compared to the questions formulated by the police. She wanted the medical expert report to answer the following questions:

- (i) whether there were other medical methods available for interrupting the pregnancy which presented less risks and which did not entail endangering her life;
- (ii) whether the chosen method presented risks and, if so, what the treating physician's obligations were before applying this method and whether the doctor had complied with those obligations;
- (iii) whether the medical procedure was urgent or whether there had been time to direct her to another, better equipped, hospital unit;
- (iv) whether the use of ultrasound might have influenced the outcome of the procedure; and
- (v) whether subjecting her to a total hysterectomy and bilateral adnexectomy could have been avoided if she had been hospitalised in a medical establishment which possessed the necessary facilities to handle a diagnosis of DIC immediately after it was detected.

18. On 27 March 2003 the Târgu Mures Forensics Institute issued an opinion (*aviz*) on the case. Its conclusions were as follows:

- (i) the case file did not include medical information which could confirm the diagnosis of hydrocephalus with certainty;
- (ii) in the case of medical procedures for interrupting pregnancy later than the fourteenth week, the hospital's standard procedure required that a medical form be filled in and signed by two specialist doctors and by the hospital director. This document was not found in the medical records;
- (iii) providing information to a patient in advance of treatment was compulsory. For certain procedures that entailed risk, the written consent of the patient was required. This document was not found in the medical records;
- (iv) prior to the procedure being carried out, lab tests had to be carried out. The results of such tests were not found in the medical records;
- (v) the haemorrhaging following the procedure could also have been caused by the rupturing of one or more blood vessels during the curettage, particularly taking into account the fact that the post-

operative report had mentioned a haemorrhagic infiltration. The medical records did not include an ultrasound description of the localisation of the placenta; and

- (vi) the diagnosis of DIC was not confirmed by the lab tests, as there were no such results included among the medical documents submitted to the institute.

19. On 16 April 2003 the prosecutor attached to the Covasna County Court, noting that based on the two medical reports it could not be precisely determined whether there had been any medical negligence which could trigger criminal liability on the part of Dr P.C., asked the Mina Minovici National Forensics Institute (“the Forensics Institute”) to review all the medical reports and to issue an opinion from a scientific point of view on the medical acts performed in the case.

20. The Forensics Institute issued its report on 26 January 2004. It confirmed the conclusions of the report of 4 December 2002 and thus excluded any medical negligence. It nevertheless observed that the doctor had failed to discuss the proposed procedure and the possible complications with the applicant and her family and to obtain her signature expressing her written consent to the proposed procedure.

21. On 17 February 2003 the prosecutor decided not to bring criminal charges against the practitioner concerned. This decision was confirmed by the supervising prosecutor and by a final decision of the Covasna County Court of 29 September 2004.

II. RELEVANT DOMESTIC LAW AND PRACTICE

22. A series of laws concerning the public health service and patients’ rights establish an obligation to inform a patient about any surgical procedure proposed, the risks involved in the procedure, alternative treatment, and diagnosis and prognosis: Laws nos. 3/1978 and 306/2004 on public health insurance; Law no. 74/1995 on the establishment and functioning of the College of Doctors; Law no. 46/2003 on patients’ rights (“Law no. 46/2003”); and Law no. 95/2006 on reform of the medical sector (“Law no. 95/2006”).

23. According to Article 37 of Law no. 46/2003, a breach of a patient’s right to be informed and consulted may engage disciplinary or criminal action against the medical practitioner, depending on the applicable law.

24. The judgement delivered in the case of *Eugenia Lazăr v. Romania* (no. 32146/05, §§ 41-54, 16 February 2010) describes in detail the relevant domestic case-law and practice concerning the delivery of medico-legal expert reports and the authorities competent for their issuance, as well as the relevant domestic case-law and practice concerning the civil liability of medical staff.

25. In the judgment rendered in the case of *Codarcea v. Romania*, the Court described in detail the relevant domestic practice concerning the civil liability of doctors and hospitals for medical errors (see *Codarcea v. Romania*, no. 31675/04, §§ 69-74, 2 June 2009).

26. Law no. 95/2006 introduced the notion of medical negligence as a basis for the liability of medical personnel and created an obligation on them to obtain insurance for any civil liability resulting from their work (see *Eugenia Lazăr*, cited above, § 54).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

27. Relying on Articles 2, 6 and 13 of the Convention, the applicant complained that she had not been properly informed of the risks of the procedure and that because of medical negligence her life had been endangered and she had become permanently unable to bear children. She considered that the investigation of the case had been superficial and that the forensic authorities had lacked impartiality in issuing the medical expert reports, leading to a situation in which she had not obtained recognition of the serious bodily harm inflicted on her and a guilty person had been protected.

28. The Court is master of the characterisation to be given in law to the facts, and can decide to examine complaints submitted to it under another Article than that quoted by an applicant (see *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of Judgments and Decisions* 1998-I). It will therefore examine the complaint under Article 8 of the Convention (see *Pretty v. the United Kingdom*, no. 2346/02, §§ 61 and 63, ECHR 2002-III, and *Codarcea*, cited above, § 101), which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, 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.”

A. Admissibility

29. The Government raised a plea of non-exhaustion of domestic remedies, arguing that the applicant should have lodged an action against the doctor and the hospital under the general tort law (Articles 998-999 and 1000 § 3 of the Civil Code). They developed the same arguments as those they had raised in *Stihi-Boos v. Romania* ((dec.), no. 7823/06, §§ 46-48, 11 October 2011).

30. They also made reference to several domestic court rulings whereby doctors' liability had been engaged under Law no. 95/2006 for medical negligence and to other court decisions rendering hospitals liable for the damage suffered by victims of medical negligence.

31. The applicant contested the Government's position. She argued that Dr P.C.'s actions had constituted serious offences and therefore submitted that a criminal prosecution had been the best suited remedy. She pointed out that her complaint concerned defects in the investigations carried out by the domestic authorities and that engaging in another set of proceedings (namely a tort action) could not possibly have remedied those flaws. She also noted that the courts had concluded that the procedure had been lawful and had thus held her claims to be unfounded.

32. Lastly, the applicant noted that the domestic case-law presented by the Government showed that doctors had been criminally convicted for less serious offenses than those done to her and that victims had been awarded significant amounts in damages.

33. The Court considers that the arguments put forward by the Government are closely linked to the substance of the complaint. It therefore joins their examination to the merits.

34. It also notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

35. The applicant reiterated that she had not been informed of the nature and possible consequences of the procedure and pointed out that the fact that she had been a nurse in the same hospital did not dispense the doctor from his duty to provide her with sufficient information to allow her to make an informed decision about the proposed treatment.

36. She also reiterated that the procedure had not been urgent. Therefore, there had been no excuse for going ahead with the procedure without proper preparation, notably pre-operative checks. Furthermore, the doctor should have been able to assess the risks of her having the procedure in the Town

Hospital, which had turned out to be an inadequate venue for handling the complications that had ensued. He should have sent her straight to the County Hospital. Lastly, she argued that the doctor had not adequately prepared for dealing with the complications, notably by failing to have an ambulance ready beforehand or to send a doctor and not only a nurse with her to the County Hospital.

37. The Government argued that the applicant had been fully aware of the nature of the procedure that was to be performed on her. She had both known the foetus's condition and had had extensive medical knowledge, as she herself had been a nurse. They also pointed out that her hospitalisation had been voluntary.

They averred that the applicant had submitted her complaint and objections to the authorities, namely the College of Doctors and the Prosecutor's Office, and had fully participated in the ensuing proceedings. The decisions taken had been based, among other things, on medical expert reports and had been fully reasoned.

38. They reiterated that the authorities had not found any medical negligence in the case. The complications that had occurred had been very rare and unforeseeable. The doctor's sole failing had been that he had not obtained the applicant's written consent to the procedure. However, that lapse could not lead to the inference that the applicant had not been informed of the nature of the procedure or the risks involved or had not given her consent.

39. The Government considered that the present case differed significantly from *Eugenia Lazăr*, cited above. There had not been any communication problems between the investigators and the Forensic Institute. In addition, the medical expert reports had not been the sole evidence in the case.

40. For the reasons above, they concluded that the State's responsibility could not be engaged under Article 8 of the Convention.

2. *The Court's appreciation*

(a) **General principles**

41. The Court makes reference to the general principles it has established concerning the State's responsibility for medical negligence under Articles 2 and 8 of the Convention. In particular, it reiterates that the Contracting States are under an obligation to introduce regulations compelling both public and private hospitals to adopt appropriate measures for the protection of their patients' lives (see *Trocellier v. France* (dec.), no. 75725/01, § 4, ECHR 2006-XIV).

42. Moreover, the Court has underlined that it is important for individuals facing risks to their health to have access to information enabling them to assess those risks. It has considered it reasonable to infer

from this that the Contracting States are bound, by virtue of this obligation, to adopt the necessary regulatory measures to ensure that doctors consider the foreseeable consequences of a planned medical procedure on their patients' physical integrity and to inform patients of these consequences beforehand, in such a way that the latter are able to give informed consent. In particular, as a corollary to this, if a foreseeable risk of this nature materialises without the patient having been duly informed in advance by doctors, the State Party concerned may be directly liable under Article 8 for this lack of information (see *Trocellier*, cited above, § 4; *Vo v. France* [GC], no. 53924/00, § 89, ECHR 2004-VIII; *Codarcea*, cited above, § 105; and *Pretty*, cited above, § 63).

43. Lastly, the Court reiterates that in the specific sphere of medical negligence, if the legal system affords victims full access to civil proceedings or to disciplinary proceedings which may lead to liability for medical negligence being established and a corresponding award of compensation, this could in principle be sufficient to discharge the State's positive obligation to provide an effective judicial system (see, *mutatis mutandis*, *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, §§ 48-51, ECHR 2002-I, and *Codarcea*, cited above, § 102).

(b) Application of those principles to the present case

44. Turning to the facts of the case under examination, the Court notes that following a medical procedure performed by Dr P.C. in a state hospital, the applicant's life was endangered and she was left permanently unable to bear children.

45. There has accordingly been an interference with the applicant's right to respect for her private life.

46. The applicant did not argue that her loss had been caused intentionally by the doctor. Her complaint refers rather to the doctor's negligence in performing the medical procedure and an inadequate response from the authorities.

It remains, therefore, to be assessed whether the State has complied with its positive obligations set out in Article 8 of the Convention.

47. The Court first notes that all the medical expert reports in the case concurred that the doctor had failed, prior to the procedure, to either obtain the applicant's informed written consent or to perform the pre-operative checks required.

48. The Court attaches weight to the existence of prior consent in the context of a patient's right to respect for his or her physical integrity (see *Codarcea*, cited above, § 104). Any disregard by the medical personnel of a patient's right to be duly informed can trigger the State's responsibility in the matter (*idem*, § 105).

49. It also notes that domestic legislation expressly provides for the patient's right to receive information sufficient to allow that patient to give,

and the doctor's corollary obligation to obtain, informed consent prior to a procedure involving any risk.

50. The Court cannot find a reasonable explanation for why that consent was not obtained in the present case. It cannot accept the Government's position, according to which the fact that the applicant was a trained nurse dispensed the doctor from following established procedures and informing her of the risks involved in the procedure.

51. Furthermore, it transpires from the facts that, while the need to abort the foetus was undisputed, there was no extreme urgency in performing the procedure. Therefore, the doctor was not under time constraints that could justify him not conducting preliminary tests on his patient or not properly assessing whether the town hospital was adequately equipped to deal with the possible complications.

The expert opinion prepared for the College of Doctors lends force to this argument.

52. The Court notes that the medical expert reports drafted during the criminal prosecution did not deal with the issue of urgency, despite the applicant's requests and objections to this end. The questions asked by the applicant were relevant and in answering them the forensic authorities could have helped shed light on the unfortunate events that led to the applicant's loss.

53. It remains to be ascertained whether the remedies at the applicant's disposal were sufficient to provide her redress for the loss suffered as a result of the medical procedure (see paragraph 43 above).

54. The Court notes that in the instant case the applicant attached a civil claim to her criminal complaint against the doctor (see paragraph 15 above, as well as *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-I). In theory, at least, at the end of these proceedings, the applicant could have obtained an assessment of and compensation for the damage suffered. This remedy was therefore appropriate in the present case and the Court will thus examine the manner in which the investigation was carried out.

55. The Court observes that the medical reports established that despite the obvious mistakes made in the handling of the case, there was no medical negligence on behalf of the doctor (see paragraphs 14, 16, 18 and 20 above and *a contrario*, *Stihi Boos*, cited above, § 60). Looking at the documents before it, the Court notes, however, that the prosecutor did not weigh the conflicting factual issues presented by the case.

56. In particular, the prosecutor based his decision on the forensic reports issued at his request. He did not take into account the medical expert report prepared for the College of Doctors, although it was exhaustive and pointed to procedural shortcomings. He also failed to take the opinion of the Forensics Institute – the superior forensic authority – on that report into account. He thus only examined the two reports issued by the forensic laboratories. He also failed to provide answers to the questions raised by the

applicant. The Court reiterates its finding that those questions were relevant and significant for the clarification of the events (see paragraph 52 above).

57. The Court is not in a position to contradict the domestic courts' findings concerning the lack of criminal responsibility of the doctor in the case. However, given the serious consequences of the procedure, and the fact that the applicant had to go through it without being properly informed of the risks involved, the Court finds it unacceptable that an operation could be performed without respect of the rules and the safeguards created by the domestic system itself.

58. The Court will further examine whether, as the Government claimed, a civil action against the doctor and the hospital could have constituted an effective remedy.

59. The Court reiterates that the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust domestic remedies (see *Stihi Boos*, cited above, § 64).

60. At the outset, the Court notes that although the experts acknowledged the existence of procedural failings on the part of Dr P.C., they excluded the existence of medical negligence (see paragraphs 14, 16, 18, 20 and 55 above). In contrast, in *Stihi Boos* the medical expert reports formed the opinion that there had been no medical negligence because the decisions taken by the medical personnel had corresponded to the diagnosis and the general state of the victim's health (see *Stihi Boos*, cited above, §§ 21 and 29-31).

61. It is to be noted that, when the facts of the present case occurred, the system did not allow for a new forensic report to be commissioned, as the Forensics Institute had already given its opinion on the case (see *Eugenia Lazăr*, cited above, § 90; and *Baldovin v. Romania*, no. 11385/05, § 22, 7 June 2011). Therefore, it would have been impossible for the applicant to raise the issue of medical negligence again in a new set of proceedings, despite the significance that its elucidation might have had for the outcome of those proceedings. This casts doubt on whether a civil claim by the applicant against the doctor would have been an effective remedy, particularly given that an expert report would have constituted the essential evidence to support her case in the civil courts.

62. The Court has already identified shortcomings in the Romanian system in respect of the limitation of doctors' liability to cases of established medical negligence (see paragraph 26 above and *Eugenia Lazăr*, cited above, § 90). Bearing in mind the consistency with which the expert reports excluded the existence of medical negligence in this case, the Court finds it even more difficult to see how this remedy could be effective in practice in the applicant's particular situation.

63. The Court will also assess the ability for the applicant to seek compensation directly from the hospital. It notes at the outset that she did

not point to a lack of coordination between the two hospitals involved. She restricted her complaint to the decisions taken by one doctor.

64. The Court notes that the domestic case-law in the matter is developing, but that the domestic courts have not consistently established the liability of hospitals in cases of medical negligence (see *Codarcea*, cited above, §§ 71 and 108; and *Stihi Boos*, cited above, § 64).

65. In the case under examination, it appears that the hospitals immediately took charge of the applicant's case. Their swift intervention made it possible to limit the negative consequences of the initial procedure and to save her life (see, *a contrario*, *Csiki v. Romania*, no. 11273/05, § 78, 5 July 2011, and *Floarea Pop v. Romania*, no. 63101/00, §§ 22, 24 and 37, 6 April 2010). The lack of any fault in the hospital's handling of the matter, coupled with the developing domestic case-law concerning hospitals' liability for medical acts (see paragraph 64 above), renders an action for compensation against the hospital too weak a remedy to be deemed effective.

66. The Court also notes the changes brought about in 2006 by Law no. 95/2006 which, in principle, would make it easier nowadays for victims of medical negligence to seek compensation in the absence of a finding of guilt (see *Eugenia Lazăr*, § 54, and *Baldovin*, § 27, judgments cited above). However, the Government did not argue that the applicant could still avail herself of these new provisions.

67. Lastly, the Court finds it relevant in the present case that the applicant did not remain passive, nor was her sole goal to have the doctor criminally punished (see, *a contrario*, *Stihi Boos*, cited above, §§ 51 and 65). She lodged a request with the College of Doctors and pursued a civil claim within the criminal proceedings. However, neither of these authorities offered her redress.

In these circumstances, it would be disproportionate to require her to lodge yet another action with the civil courts.

68. The foregoing considerations are sufficient to enable the Court to conclude that by not involving the applicant in the choice of medical treatment and by not informing her properly of the risks involved in the medical procedure, the applicant suffered an infringement of her right to private life.

Furthermore, the system in place as at the date of the facts of the present case made it impossible for the applicant to obtain redress for the infringement of her right to respect for her private life. The respondent State has therefore failed to comply with its positive obligations under Article 8 of the Convention.

For these reasons, the Court will dismiss the Government's objection and conclude that there has been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. 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

70. The applicant claimed 75,000 euros (EUR) in respect of non-pecuniary damage.

71. The Government argued that there was no causal link between the alleged violation and the damage claimed and that in any case the amount sought in that respect was excessive. They considered that the finding of a violation would constitute sufficient just satisfaction in the case.

72. The Court reiterates having found a violation of the applicant’s right to privacy. It considers that the applicant incurred non-pecuniary damage which cannot be compensated by the mere finding of a violation. It therefore awards the applicant EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

73. The applicant did not make a claim under this head.

C. Default interest

74. 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. *Joins* to the merits the Government’s objection as to the exhaustion of domestic remedies and *dismisses* it;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 8 of the Convention;

4. *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 6,000 (six thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(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;

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

Done in English, and notified in writing on 15 January 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Mariarena Tsirli
Deputy Registrar

Josep Casadevall
President

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